

THE
Argument of *Archdeacon Mathews*
FOR
A Commission of Delegates
UPON

His Appeals and Querel of Nullities.

Those Wounds with which I was wounded in the house of my friends; *Zech. 13. 6.*

Consider of it, take advice, and speak your minds; *Judges 19. 30.*

The Law is good, if a man useth it lawfully; *1 Tim. 1. 8.*

The Law willeth that in every case, where a man is wronged, he shall have remedy; *1. Inst. 197.*

The Law is the best birthright the Subject hath; It is the surest Sanctuary that a man can take, and the strongest fortress to protect the weakest of all; No man shall be put out of his livelihood but by the due course of Law; *2. Inst. 46, 56.*

It were to no purpose for any man to have any right in any inheritance, if there was not a known remedy in law; *Seld. in Rushw. Vol. 1. p. 531.*

Injuria facta uni Clerico videtur facta toti Ordini Clericali; Lynw. 318.

Summum jus summa est injuria; Plowd. 160.

Qui appellat a gravamine, justè appellat, licet appellatio sit remota in Rescripto; quia non adversus Literas Principis, sed adversus malitiam Judicis appellat; 2 q. 6. c. 29.

Tenete quod dixi & distinguite; Due res sunt, Conscientia & fama: Conscientia necessaria est tibi, fama proximo tuo: qui fidens conscientie sue negligit famam suam, crudelis est; August. Serm. de vita Cleric.

Printed in the Year 1704:

THE HISTORY OF THE

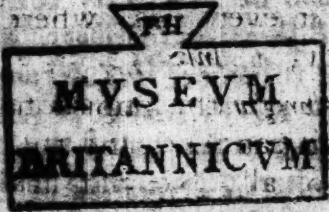
ANTIENT AND MODERN

ARTS AND MANUFACTURES

OF THE KINGDOM OF GREAT BRITAIN

AND THE EMPIRE OF IRELAND

IN THE YEAR 1763



BY JAMES OUSELEY, ESQ.

OF THE MIDDLE TEMPLE

AND OF THE BAR

AT THE END OF THE SECOND VOLUME

OF THE HISTORY OF THE

ARTS AND MANUFACTURES

OF THE KINGDOM OF GREAT BRITAIN

AND THE EMPIRE OF IRELAND

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Advertisement to the Reader.

READER,

UPON your perusal of the following Argument you may be of the Author's mind, that the Publication of it is lawful in itself, necessary for him, expedient for some others and useful to the Publick. The matter chiefly is a point of law, not yet decided, nor fully heard; and the consequence of it may be general and great: viz. whether the Lisburn-Commission was a High Commission; and whether the Subject may have right and no remedy; for the expectation of an extraordinary remedy is no right. The Branch of the Irish Act, 2 Eliz. concerning Ecclesiastical Commissioners, is not indeed repealed: The Queen's Court of her Supreme Prerogative pro causis Ecclesiasticis in Ireland was first grounded & now stands erected upon that Branch: Appeals, Quereles of Nullities and Prohibitions lie from it by common law as from the Consistories of Arch Bishops and Bishops. If the said Lisburn-Commission (which is the subject of this Argument) had its foundation on that Branch, the Petitioner in reason and justice may expect the course and benefit of the Law in his Appeals and Quereles. All the Judges in England (as is reported in 12 Co. 48) resolved That the King by his Commission upon the like Branch could not alter the Ecclesiastical law nor the Proceedings of it. If this Lisburn-Commission be so high that no Appeal, Nullity or Prohibition may reach at it for a common right against wrong, doubtless it was and is a pernicious Commission and void (altho' the Declaration of our late Deliverer, and thereupon the English Act 1 W. & M. Sess. 2. c. 2. did not extend to the Subjects of this Kingdom) for otherwise by such a Commission all the Bishops and Clergy in Ireland might be deprived; and may together with all the Laitie, be excommunicated without any just cause, or legal process, or any ordinary redress; and then what may become of our deliver'd Properties, Liberties and Religion? If any persons should be so ill-natured as to pick out of this Argument some expressions which may seem too vehement, and not humble enough towards the Commissioners, and object them against the Author, these might consider the provocations given to him; and besides those Commissioners were not

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Judges of Record, but averment may be taken against their Proceedings; and even Ecclesiastical Judges, when they take upon them the cognizance of matters of which they had not Jurisdiction, may be treated as private men; and moreover Law and Practice allows Complainants, in their suggestions and appeals from Spiritual Courts, to charge those Judges with—false et malitiose machinantes—et in querelantis odium sententiantes. This Argument may be the best Sermon the Author ever Preach'd, if it makes men really to repent, yea alio' they do it but by way of Restitution; However he kept close to this Text, Nulli negabimus aut differemus Justitiam vel Rectum: and he hopes no Christian or honest man will stop or divert him in the course of Justice; and the Law abhors the failure of Justice. The Authorities of the Law, cited in this Argument, were taken from the Originals, and faithfully represented; and those quotations out of the Canons and Usages of the Chancery and Rota at the See Apostlick may be very proper for the decision of this business, and the Irish Act of Appeals seems to direct to that learning. They who think the Argument too long may remember the verse of a Lord Ch. Justice—Non sunt longa quibus nihil est quod demere possis; Vaugh. Rep. 138. To those who say The Petitioner, being a Divine, ought to submit and suffer, to trust to Providence and not to lean on the laws of the land, to study St. Austin rather than Plowden; One answer is, That not only prudence but fortitude also is a virtue; that he ought not to suffer as a fool, or tempt providence and abandon those natural and legal defences which reason affords. His greatest danger may be by a Text in Ecclus. 8. 14, Go not to Law with a Judge, for they will judge for him according to his honour; but this is Apogrypha, and ought not to be applied in his Case; especially seeing he is secured by two Canonical Texts directed to Judges in 2 Chron. 19. 6. Take heed what ye do; for ye execute not the judgments of man, but of the Lord; and in Prov. 24. 23. It is not good to have respect of persons in judgment: and the Statutes 2 E. 3. 8. & 20 E. 3. 1, 2, 3. require Judges to do right according to their oaths and offices to all men without delay, or respect of persons, or regard to Letters or Commands from the King himself to the contrary.

To the

TO THE
 Right Honourable Sir Richard C O X,
 Lord High Chancellor of Ireland.

The Humble Petition of Lemuel Mathews Dr. of Divinity.

Sheweth,

THAT your Petitioner (having been quietly possessed under Legal Titles of the Prebend of *Carncastle* in the Diocese of *Connor* ever since the year 1667, and also of the Archdeaconry of the Cathedral Church and Diocese of *Down* since 1674, and likewise of the Chancellorships of the said Dioceses since 1690) was in the year 1694, as at the instance of one *Talbott Keen*, by several pretended definitive Sentences disseized of all his Ecclesiastical Freeholds, *viz.* His said Prebend, Archdeaconry and Chancellorships, and was also decreed Excommunicated by the Right Reverend Fathers in God, *William* then Lord Bishop of *Derry*, now Lord Archbishop of *Dublin*, and by *Anthony* the late Lord Bishop of *Meath* deceased; who with *Capell* late Lord Bishop of *Dromore* (by a Commission under the Great Seal by Warrant of the then Lords Justices of this Kingdom) were appointed not only to visit the said Dioceses, but to exercise therein Ecclesiastical Jurisdiction, as Judges, according to the course of the Ecclesiastical Laws of Force in *Ireland*; in which Commission the Prerogative Clause for extraordinary Proceedings *Ex Officio mero de plano, summarie & omni appellatione remota* (usually inserted in the High Commissions for Ecclesiastical Causes in *England*) was omitted.

That the said Lords Bishops did not charge your Petitioner with any Enormity or Immorality, nor sentenced him for any

of the offences complained of and specified in their said Commission; but they condemned him (as their Sentences expressed it) *Propter commissa, permissa sive neglecta*; for uncertain, and therefore as he is advised, for insufficient and for no lawful and just cause.

That your Petitioner humbly conceives, and is likewise advised, that the Sentences and the whole Proceedings of the said Lords Bishops against him were and are meer Nullities and utterly void in Law; as being made upon matters upon which they had not cognizance, and in an arbitrary and illegal Procedure, by *their own meer and noble Office* (as Commissioners having in themselves radical Jurisdiction) and contrary to the Tenor of their said Commission, and repugnant to the course and rules of the said Laws.

That your Petitioner appealed in due time from the Proceedings and Sentences of the said Lords Bishops (as manifestly erroneous and very grievous) unto their late Majesties in their High Courts of *Chancery in England and Ireland*; as was usual to to appeal from Regal Commissioners for Ecclesiastical Causes commenced in the Supreme Court of Prerogative in *Ireland*; and he likewise interposed his *Querel of Nullities* against the said Proceedings and Sentences as void acts; and the said Appeals and *Querel* have not been declared as deserted, nor have the grievances and Nullities, therein complained of, been yet examined in any Court.

That Your Petitioner (lying under the great misfortune of being misrepresented by his powerful Adversaries in the last Reign, and being likewise bereaved of his whole livelihood) was not able (notwithstanding his incessant endeavors) to obtain a remedial Commission of Delegates upon his said Appeals, or upon his *Querel of Nullities*.

That Your Petitioner is advised that his said Appeals and his other Procefs, *viz.* his *Querel of Nullities*, are now presented to Your Lordship according to the form of the *Irish Act of Appeals, 28 H. 8. c. 6*. Since they are directed to the Lord Lieutenant and Chief Governour of this Kingdom.

That

That Your Petitioner is further advised, that the said pretended Sentence of Excommunication, if legal, ought not to be perpetual; but being a continued Grievance is and will be always Appealable until relaxed, or judicially declared to be null; that your Petitioner needed not to have appealed from the said Proceedings and Sentences, as they are Nullities, otherwise than thereby to stop the actual force of them; that if the said Appeals had been deferred, rejected, prohibited, or never had been made, yet the said Nullities (having no subsistence in the Law) can never pass in *res judicatas*, but may at any time within forty years be complained of in the High Court of Chancery in *Officina Justitie*, that they may be examined upon a Commission of Delegates; and that the usual Clause, *Omisso appellationis articulo* (inserted in such Commissions upon Appeals and *Querels*) intimates that the said Delegates, finding any Nullity in the transmitted Proceſs, need not to insist upon the validity of the Appeal, but they may hear and determine the Nullity and the principal Cause.

That the Premises may more fully appear before Your Lordship, your Petitioner hath hereunto annexed true and attested Copies of the said Commission, Proceedings, Sentences, Appeals, and *Querel* of Nullities; and also a Schedule of Objections against the said Appeals and *Querel*, with Answers to the same, for Your Lordship's consideration.

May it therefore please Your Lordship (in order to Your Petitioner's relief from his many long and intolerable Grievances aforesaid) to grant His Majesty's Gracious Commission, directed to some of the Right Reverend the Bishops, and some of the Learned Judges of the Common Law, and Doctors of the Law, and to some of the Divines of this Kingdom, to hear and determine Your Petitioner's said Appeals and *Querel* of Nullities, and to do unto him what Law and Justice shall require.

And Your Petitioner shall ever Pray, &c.

Le. Mathews.

3d of Septemb. 1703.

This Petition, with the annexed Papers, were then Presented to the Lord Chancellor by

Le. Mathews.

10th of November, 1703.

Let the Petitioner and all Parties concerned in the matter of this Petition attend me at the *Queen's-Inns* at three of the Clock in the Afternoon on *Wednesday* the 17th day of this instant *November*, and hereof give notice forthwith.

Richard Cox, Canc.

10th of November, 1703.

A true Copy of the above Petition and Order was then delivered to His Grace *William* Lord Archbishop of *Dublin* by

Le. Mathews.

18th of November, 1703.

Let the Petitioner and all Parties concerned in the matter of this Petition attend me in the *Chancery Chamber* at ten of the Clock in the morning on *Wednesday* the 1st day of *December* next, and hereof give Notice forthwith.

Rich. Cox, Canc.

We have perused and considered this Petition, and also the Stat. 2 *Eliz. c. 1.* and the Stat. 28 *H. 8. c. 6.* of Appeals; and are of Opinion that the Petitioner's Case is within the said Stat. 28 *H. C. 6.* And that he ought upon his Petition to be allowed a Commission of Delegates.

Dec. the Fourth, 1703.

Rich. Nutley. Theobald Butler. Fra. Bernard.

6th of December, 1703.

Let the Petitioner and all Parties concerned in the matter of this Petition farther attend me in the *Chancery Chamber* on *Friday morning* next at ten of the Clock, and hereof give notice forthwith.

Rich. Cox, Canc.

Febr. the 8th. 1704.

All the Judges are desired to meet my Lord Chancellor in the *Exchequer Chamber* on *Thursday* next at three of the Clock in the Afternoon upon the Case of Archdeacon *Mathews.*

The

The Querel of Nullities.

Querela Nullitatum proposita & annexa appellationibus interpositis quinto die mensis Aprilis Anno Domini 1694 ex parte Lemuelis Mathews, S. Th. P. Cancellar. Dioces. Dunens. & Connorens. necnon Archidiaconat. Ecclesie Cathedralis & Dioces. Dunens. predict. ac etiam Prabendar. Prabend. de Carncastle infra dictam Dioecesim Connorens. querelantis adversus Reverend. in Christo Patres ac Dominos Dominos Anthonium Episcopum Midenf. & Gulielmum Episcopum Derens. pratenf. Commissionar. Ecclesiast. ac Delegatos virtute Commissionis sub magno sigillo Hibernie date 19th Dec. 1693 constitutos ad Visitand. Dioces. predict. & ad Audiend. & determinand. causas ibidem Ecclesiasticas; De quibus predict. Nullitatibus, inter alias, prefat. Lemuel querelando contra predict. Commissionar. (Reverentia eorum in omnibus semper salva) proponit & allegat.

Imprimis, Quod Commissionarii predict. procedendo, tanquam Judices Ecclesiastici in Curia apud L. in Diocesi Dunensi predict. contra prefat. Lemuelem instituerunt & decreverunt contra eundem super negotiis quarum Jurisdic. ac cognitionem non habuerunt, viz. super solatione pecuniar. procuratoriar. deque exhibitione Tituli dictae Prabendae, ac de Residentia parochiali prefati Lemuelis in Rectoriis Archidiaconat. & Prabend. predict. unitis, deque eisdem Jurisdic. tanquam Cancellar. predicti in Curia Audientia Episcopali in Diocesi predicta, deque aliis hujusmodi negotiis ordinaria Jurisdic. De quibus predicti Commissionar. (specialiter constituti super Statuto 2 Eliz. c. 1. in Regno Hibern. proviso & edito de Inquirend. & corrigend. enormitates Ecclesiasticas) minime fuerunt competentes prout per dict. Commissionem, Articulos et Sententias predictor. Commissionarior. contra prefat. Lemuelem sua huic Querela annex. (qua probic lect. et insert. haberi petit et vult, et ad qua se refert) plenius liquet & apparet; Unde prefat. Lemuel querelatur per presentem querelam de incompetencia predict. Commissionarior. et de defectu eorum Jurisdic. super negotiis predict. etiamsi Commissionar. predicti contra eundem Judicialiter processerint.

Item, Quod predicti Commissionarii (supposito quod in negotiis predictis sint competentes) in eisdem tamen processerunt contra formam Commissionis predictae ipsis specialiter mandata qua predicti Commissionarii mandantur exercere Jurisdictionem juxta cursum & ordinem Juris Ecclesiastici in Regno Hibernie usitatum; Et quod clausula procedendi extraordinarie, Ex officio mero, de plano, sine forma & figura judicij & appellatione remota, non erat incerta in Commissione predicta; Nihilominus predicti Commissionarii procedendo contra prefatum Lemuelem omiserunt inferere tenorem predictae suae Commissionis in citatione sua primaria, eademque unica & peremptoria contra eundem emanata, nec in dicta citatione expresse mentionarunt aliquod delictum aut aliqua delicta vel certas causas ob quas vel qua prefatus Lemuel

mucl citatus & responsurus est coram ipsis Commissionariis; nec emanavit dicta citatio priusquam prædicta Commissio deliberata fuit ad prædictos Commissionarios; unde præfatus Lemuel ulterius proponit & allegat dictam citationem, ac exinde prædictum processum & sententias subsecutas contra eundem latas fuisse & esse ipso Jure invalidas & nullas.

Item, Quod prædicti Commissionarii libellos suos & articulos accusatorios (ut præsumptum est tanquam in Judicio ordinario & criminali & juxta Juris ea in parte exigentiam) contra præfatum Lemuelem generales, ineptos & sine petitione promotoris aut procuratoris fabricatos subscripserunt & exhibuerunt; iidemque Commissionarii super dictis articulis ex præsenso officio suo mero & nobili plurimos prætenso actus Judiciarios contra præfatum Lemuelem minime citatum inactitarunt, testiumque effrenatam multitudinem super dictis articulis minime citatorum & contra eundem inimici conspirantium admitterunt, lite nondum contestata, & ordine Juris quæso & penitus spreto.

Item, Quod prædicti Commissionarii tanquam Judices & Partes in sua propria causa, contra præfatum Lemuelem ex officio suo mero, ut præfertur, inactitantes, eundem in præsenso Judicio & super negotiis prædictis & expensis excessive condemnarunt, contra Juris regulas & praxin in talibus usitatam.

Item, Quod prædicti Commissionarii prætenfas suas sententias de multis contra præfatum Lemuelem quatenus Archidiaconum & Præbendarium prædictum præcipitanter & sibi contradicentes, viz. Ex officio suo mero, simulque ab instantia ejusdem Talbot Keen, a quo causa criminalis propter incerta, sc. commissa, permissa, sive neglecta, eoque intuitu in se manifestam iniquitatem continentes, tulerunt.

Item, Quod prædicti Commissionarii præfatum Lemuelem, ut supra Sententiando, in eundem inconsumeras & graves poenas quas in hujusmodi casibus per Canones statutas inflixerunt; privando eum beneficiis suis per viam Inquisitionis, inque causa correctionis pro salute anime.

Item, Quod prædicti Commissionarii præfatum Lemuelem ab ipsis Commissionariis, eorumque prædictis Sententiis actualiter appellantem, & minime citatum excommunicaverunt; ac etiam eundem ab officiis suis Cancellariatus prædicti suspenderunt, necnon a suis Archidiaconatus & Præbende prædict. beneficiis eum sequestrarunt, absentem, & non citatum, & pendente appellatione, ut supra.

Denique quod prætenfus Processus prædictorum Commissionariorum contra præfatum Lemuelem fabricatus (prout supra & per annexa plenius liquet) compluribus aliis quam superius mentionatis suis militibus, iniquitatibus & attentatis; de quorum specificatione congruo tempore fando præfatus Lemuel à prædictis Commissionariis & Delegatis ad Potestatem superiorem & Delegantem recurrere gravatus & querelans protestatur.

Copia vera ita testor Rich. Owen Not. Pub.

Le. Mathews

A N

A R G U M E N T

ON THE

Petition of Archdeacon Mathews to the Lord Chancellor of Ireland for a Commission of Delegates upon his Appeals and Querel of Nullities, Proving

THAT His Lordship is bound by vertue of his Oath and Office, as Lord Chancellor of Ireland, to do right to all manner of people according to the Laws and usages of this Realm.

2. That His Lordship's granting to the Petitioner a Commission of Delegates, upon his said Appeals and Querel, is a common right of the Subject: and due to the Petitioner by the Laws and Customs of this Kingdom.

Therefore his Lordship ought to admit the said Appeals and Querel, and thereupon to grant to the Petitioner a Commission of Delegates according to his Petition.

This Argument includes both parts of the Case, as it is stated in the said Petition, *viz.* 1. That his Lordship ought by right to admit the said Appeals, and thereupon to grant to the Petitioner a Commission of Delegates; and 2. That if the Petitioner had never appealed, yet his Lordship cannot justly deny to him a Commission of Delegates upon his said Querel of Nullities.

The first Proposition in this Argument is plainly and fully proved by the words of the Oath, (which the Lord Chancellor

akes) and the Tenor of his *Office*, set forth in Co. 4. *Inst.* 78 and 88; and in the Rolls.

The second Proposition may be proved by the Irish *Act* 28 H. 8. c. 6. and other *Statutes*, and by the *Canon* and *Common-Law*, and also by the usages of this Realm.

In proving this second Proposition (especially concerning the said *Appeals*) it is requisite that the nature and distinctions of Ecclesiastical *Commissions*, *Jurisdictions*, *Sentences* and *Appeals* be first considered: for thereby the chief Point in question (which prejudice or interest have long kept in the dark) may be brought into a clear light; and many objections which have been made against it, will thereby be anticipated and refuted.

The *Lisburn-Commission* (or that *Ecclesiastical Commission* which is mentioned in the said Petition and is annexed to it, and was sped at *Lisburn*) was not properly a *Regal Commission*: for it was granted in the year 1693 by the then Lords Justices of *Ireland*, and by their Warrant, and not by the King's Letter, and it issued under the Great Seal of this Kingdom, as grounded upon the branch of the Irish Statute 2 Eliz. c. 1. concerning Ecclesiastical Commissions, and therefore the said Appeals may seem to lie now regularly from the *Lisburn-Commissioners* to the present Chief Governour or Lords Justices of *Ireland*, who succeed in the place of their said Predecessors, according to the rules of Law, *Si Delegans desit esse Jdex, appellatur ad illum qui est in ejus loco: A Commissario ad committentem; à Delegato ad Delegantem; ab Inferiore ad proximum superiorem appellari debet.* Prout Cod. l. 7. tit. 62. c. 16. & 32. Marant. Spec. de app. p. 378. n. 386.

The said *Lisburn-Commission* (what ever use the Commissioners might make of it) was not in its own nature a *High Commission Ecclesiastical*, or such a Commission which the Parliaments of *England* and *Ireland* in the year 1640 declared was a nuisance or grievance to the Subjects; prout the *English Act* 16 Car. 1. c. 11. and Sir Richard Cox's History of *Ireland*, part 2. p. 62 & 65: Nor was it such an Ecclesiastical Commission, by which the present Lord Bishop of *London* in A. D.

1686 was suspended, and others were deprived; which Commission and also all other Commissions of the like nature, by the Act 1 W. & M. Sess. 2. c. 2. were declared illegal and pernicious, as repugnant to the common rights of the Subjects, which rights are common to the Subjects of Ireland, as well as of England; that Commission was pernicious, in that it prohibited Appeals; for it expressly commanded the Commissioners to execute it, and every part of it, notwithstanding any Appellation to be made from them, or any provocation, privilege or exemption; and notwithstanding any Law, Statute, Proclamation, Grant or Ordinance to the contrary; This Prohibition was a Suspension, or rather an Abrogation of the Statutes and Laws concerning Appeals, and also a restraint against the common rights and liberties of the people; since an Appeal is due to the Subject by natural Justice.

The afore said Branch in the said Irish Act 2 Eliz. c. 1. is in effect the same with the like Branch in the English Act 1 Eliz. c. 1. relating to Ecclesiastical Commissions: and this Branch in it self and by its own natural vigour is salutary and not pernicious, unless violently bent and wrested to evil ends, and the support of Arbitrary Power in the Church; for it was and is declaratory of the Common Law of the Church and Realm, and the contents of that Branch in the next Paragraph of those Acts were comprized in the Oath of Supremacy. The Makers of those Acts and of that Branch declared in D'Ewes Journal, p. 25 & 29, and the Temporal Judges in their Reports resolved That this Branch was not introductive of a new Law, nor an Innovation, but an Act of Restitution of the ancient Ecclesiastical Jurisdiction; and conferr'd on Queen Eliz. or her Successors no new Authority in Ecclesiastical Affairs, but only explained and restored the old Power in those Affairs, which the Supreme Governors of these Kingdoms had before the Pope usurped their Supremacy; That this Branch and Act did not express or imply that the Queen or her Successors might in person exercise Ecclesiastical Jurisdiction, but they might do it by their Commissioners, their Bishops, and other Ecclesiastical Judges; and that only lawfully, and not as the Pope and his Delegates did in an arbitrary Procedure, but according

to the rules, forms, order and course of the Queen's Ecclesiastical Laws of force in these Kingdoms and practised in her Ecclesiastical Courts, that this Branch did not intend to alter the Canon Law made or admitted here, nor the Punishments prescribed by it, nor the Proceedings in the Consistories and Courts Christian used and allowed in these Realms: that the principal intent of that Branch was to transfer the Power and Jurisdiction (which the Popish Bishops and other Ecclesiastical Judges then acted under the Pope's Authority) to the Queen's Commissioners, and to such Protestant Bishops and Ecclesiastical Judges who would exercise Ecclesiastical Jurisdiction under the Queen's Majesty, as they did in the Reigns of K. Edw. the Sixth and K. Henr. the Eighth in the Name of the King and during his pleasure; and that the Q. might have granted such Ecclesiastical Commission, if the said Branch had never been made, prout Co. 4. Inst. 331. Moor's Rep. 755. Cro. Eliz. 742. Cro. Jac. 37. Hetl. 132. Noy. 100. 2. Brown 6, 18. Davil. 4. 2. Rolls Abrid. 223. Cawley 6, 8. Ventr. 268. Co. Cawdries Case 5. Rep. 8, 9. 12 Rep. 19, 20, 46, 49, 50, 80, 83. for this Branch in the English Act 1 Eliz. c. 1. was only a repetition of the former Statutes of 26 H. 8. c. 1 & 37. H. 8. c. 17. and 1 Ed. 1. c. 2. and in effect was confirmed by the subsequent Statutes of 8 Eliz. c. 1. and 22 Car. 2. c. 1. Sect. 18. and likewise the said Irish Branch 2 Eliz. c. 1. was only a recital and revival of the Irish Act 28 H. 8. c. 5. and is still of force in this Kingdom.

The said English Branch, as many other good things in the World have been abused, was much wrested by the High Commissioners Ecclesiastical, and therefore it was Repealed by the said English Statute 16 Car. 1. c. 11; but the Repealers of it declared that by colour of some words in that branch of the Statute 1 Eliz. c. 1. the High Commissioners to the great and insufferable wrong and oppression of the King's Subjects, exercised Authority not belonging to the ancient Ecclesiastical Jurisdiction restored by that Act to the Crown, for that Branch empowered the Commissioners to exercise Ecclesiastical Jurisdiction lawfully, and by vertue of that Act and their said Commission under the Queen's Majesty and her Successors, according to the tenor and effect of that Com.

Commission, notwithstanding any matter or cause to the contrary notwithstanding, viz. notwithstanding the objections made by the Papists and Puritans against the Queen's Ecclesiastical Supremacy, pretending that the Parliament had not in it self Spiritual or Ecclesiastical Jurisdiction or Power; and therefore they could not vest it in the Queen, and that she could not grant it out to her Commissioners; but this nonobstante was no more a restraint against a Quere of Nullities or an Appeal from the Commissioners, than a Prohibition or a Premunire lay against them; but many Prohibitions and Premunires were awarded against the High Commissioners, prout in 13 Rep. 10, 11. & 12 Rep. 38. 46. and therefore Appeals lay from Commissioners assigned by vertue of that Branch: for the like nonobstante was put in another Branch of the said Act 1 Eliz. c. 1. Sect. 11. which empowred Doctors of the Civil-Law, tho' Lay and Married Men, to exercise Ecclesiastical Jurisdiction; and such a nonobstante was likewise put in a Branch of the English Act of Uniformity, 1 Eliz. c. 2. which required every Archbishop and Bishop to punish by censures of the Church all those who do not resort to their Parish Church every Sunday and Holyday: The said Act also empowred all and singular Archbishops, Bishops, and their Commissaries, Archdeacons, and other Ordinaries, having any peculiar Jurisdiction, to enquire and take accusations of all things done within the limits of their Jurisdictions contrary to that Act; and to punish the same by Admonition, Excommunication, Sequestration, or Deprivation, and other Censures and Process in like form as heretofore hath been used in like cases by the Queen's Ecclesiastical Laws: yet Appeals lay from those Bishops and Doctors, if they exercised their Jurisdiction to the grievance of the Subject, or acted contrary to the rules and course of the Ecclesiastical Law, and the meaning of those nonobstantes was that all Ecclesiastical Judges ought to maintain the Queen's Supremacy in Ecclesiastical Causes, and to act under her Authority, and by her Laws, notwithstanding the said pretences, or any other matter or cause to the contrary: the High Commissioners (procuring a Prerogative-Clause to be inserted in their Commission, by which they were empowred to proceed *de plano, absque omni forma*

forma & figura Judicii, & omni appellatione remota, viz. to act extraordinarily & extrajudicially) conceived that the said *non obstante* would bear them out in proceeding arbitrarily, and pursuing whatever was contained in their Commission; and accordingly they acted in a despotick manner, *brevi manu*, and as in the exercise of a *uncontroulable power*; which conceit of theirs was a false and *abusive colour* put upon the true sense of the Makers of the said Act and Branch, as all the Judges of C. B. in 9 Jac. 1. resolved in their Exposition of that Branch, and of the power of the High Commission Ecclesiastical, *provs 4. Inst. 328.*

The English Parliament in the Statute 13 Car. 2. c. 12. (notwithstanding their confirming the Repeal and damning the High Commission aforesaid) allowed the exercise of Ecclesiastical Jurisdiction, not only of Bishops and their Commissaries, but also of all those persons who by grant or Commission of the then King and his Successors exercised any manner of ordinary Ecclesiastical Jurisdiction in any Ecclesiastical Causes in the ordinary course of Justice according to the King's Ecclesiastical Laws used and practised within the Realm; and the said Statute further declared, that (notwithstanding the Repeal aforesaid) the King's Supremacy in Ecclesiastical matters and affairs was not thereby abridged or diminished; and the subsequent Statute of 22 Car. 2. c. 1. Sect. 18. declared that the then King and his Successors may from time to time and at all times thereafter exercise and enjoy all Powers and Authorities in Ecclesiastical Affairs as fully and amply as himself or any of his Successors have or might have done the same: and the aforementioned English Act 27 H. 8. c. 17. and the Act 1 Ed. 6. c. 2. (revived and confirmed by the Act 1 Jac. 1. c. 25. and is still of force, *provs Rushw. Collect. Vol. 2. p. 1144.*) declared that not only by the acknowledgment of the Clergy of the Realms of England and Ireland, but also by the word of God, the holy Scripture, the King's Majesty is and always justly hath been the Supreme Head of the Church of England and Ireland, and that the King hath power to appoint persons to exercise all manner of Ecclesiastical Jurisdiction, and that not only Archbishops and Bishops, but also the King's Vicars-General,

General, Chancellors, Commissaries, Visitors, Judges, and other persons, who have any manner of Ecclesiastical Jurisdiction within these Realms, have it by, under and from the King's Majesty, and from no other Authority.

The said *Lisburn* Commission was such an Ecclesiastical Commission as those Commissions were, which Archbishops and Bishops of England received from K.H. the 8th and K.Ed. the 6th, empowering the Commissioners to act and decree in their respective Dioceses as the King's Commissioners, in the King's Name, and during his pleasure as aforesaid; and these Commissioners were Ordinaries; prout Fox's Martyrolog. Vol. 2. p. 320, 321, 452, 699. and Bishop Burnet's History of Reformation, part 1. p. 267. and Collect. p. 184. & part 2. p. 6. & Collect. p. 90. and Harmer's Specimen, p. 52. and thus the Ecclesiastical Commissions granted by Queen Eliz. in the first year of her Reign, (viz. the Commission dated the 24th of June 1 Eliz. grounded upon her Prerogative or the Common-Law; and her Commission dated the 19th of July 1 Eliz. founded upon the said Branch of the English Act 1 Eliz. c. 1. aforesaid) empowered the Queen's Commissioners and Delegates for Ecclesiastical Causes to exercise Ecclesiastical Jurisdiction as Ordinaries, viz. to admit Clerks upon Presentations to Vacant Churches, to Institute and Induct those Clerks into those Churches, to receive the Resignations of Ecclesiastical Benefices, to prove Wills, to grant Testamentary Administrations, &c. prout Id. Bishop Burnet's, part 2. Collect. p. 351 & Pars 9. Roll. 1 Eliz. in Offic. Rotul. Canc. Angl. In which cases the Parties grieved might take simple or double Quereles, or Appeals, as of course from the said Commissioners as well as from Bishops and other Ordinaries.

There is in Law little or no difference between Ordinaries and Ecclesiastical Commissioners or Delegates, or any other Ecclesiastical Judges appointed within their Districts to exercise ordinary Jurisdiction in Ecclesiastical Causes of the first instance, prout *Termes de Ley* vis. Ordinary, and in *Lyntw. Provinc.* p. 16, 17. *Quilibet habens Jurisdictionem Ordinariam dicitur Ordinarius*; Oibon. Const. p. 51. *Dutand. Spec. l. 1. p. 98. n. 1.* & p. 134. n. 9. *Præfec. Præx. p. 256. n. 22.* and it is a general

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Rule, that Appeals lie from such Ordinaries, *In omnibus causis in quibus ordo Judicarius est servandus; appellari possunt* Hostiens. Col. 225. 1173. But the custom is for Archbishops, Bishops and Archdeacons to exercise Ordinary Ecclesiastical Jurisdiction in their own Names; and for their Vicars General and Commissaries to act in the Names of the said Archbishops, Bishops and Archdeacons; and the said Commissaries are styled Ordinaries, when the cognizance of all manner of Ecclesiastical Causes throughout the whole Diocese is committed to them; but those are called Delegates or Surrogates who are appointed to exercise Ecclesiastical Jurisdiction in certain causes, or in certain places of the Diocese, *prout* Law Terms. tit. Commissary: And even the English Acts of Appeals do allow Appeals to be made, as well from Commissaries, as from Archdeacons, Bishops and Archbishops. Archbishop Laud in the Hist. of his Troubles, p. 309 says, that He and all the Bishops of England derived all their forinsecal Power in foro contentioso from the King and the Crown; and therefore Appeals may be made from the King's Ecclesiastical Commissioners.

All Ordinaries are Ecclesiastical Commissioners, altho' all Ecclesiastical Commissioners are not Ordinaries: for some Ecclesiastical Commissioners, as the High Commissioners, had their Commission to be sped as meer Executory, and not as Jurisdictional: *prout* Fuller's Argument on the High Commission, p. 23 & 30. The High Commission in England, when it became a grievance, was not solely or chiefly grounded upon the said Branch of the Act 1. Eliz. c. 1. aforesaid, but upon the King's Prerogative-Royal and by vertue of his Absolute Authority: and the High Commissioners were not properly Ecclesiastical Judges or Visitors; for they were appointed to possess the person of the King in the Government of the Church; and therefore no Appeal lay from them, as the Temporal Judges resolved in Smith's Case in Moor's Rep. 782. They were to the King, as in the Civil-Law the *Praefecti Praetoria* were to the Emperor, who might make Laws and Constitutions; and only a supplication lay from them to the Emperor for a Commission of Review, *prout* Cod. l. 1. t. 26. ff. de Off. l. 7. c. 1. And the High Commissioners by

by the Act 1 Eliz. c. 1. Sect. 12. were appointed as the Queen's Advisers in Ordaining and Publishing, if needful, further Rites and Ceremonies of the Church: By their Commission they were authorized to Fine and Imprison, and to hear and determine Causes by a Jury of twelve Men, prout Savil's Rep. 38, 114. and to execute the Penalties set forth in the Statutes of 1 Eliz. c. 1. and 2 Eliz. c. 1. and 13 Eliz. c. 12. and 35 Eliz. c. 1 & 2. and 1 Jac. 1. c. 4. prout Fuller, p. 19, 20. and the High Commissioners, by the English Canon 86th were to receive Certificates of Ordinaries, and *Ex officio mero* to compell the Parties to obey the certified Decrees of those Ordinaries. These Commissioners were Constituted to deal only with Heresies and Schisms, and such outrageous Enormities and Crimes which were *extra omnem normam*, and which would destroy the Government of the Church, if they were not speedily redressed; and which the Ordinaries could not punish in their Consistories or Visitations, prout Co. 13. Rep. 47. For those crimes, tho' notorious in themselves, yet being brought into ordinary cognizance, fell under contest; and thereby the Criminal (denying the notoriety of the Fact charged on him, and protesting that the Ecclesiastical Judges in their declaratory Sentence mistook the Law in his Case) could not be denied the benefit of the Law, and the right of a Subject in appealing from that Sentence.

All Archbishopricks and Bishopricks in Ireland are Royal Donatives, 2 Roll. Abr. 342. as all Bishopricks in England were, until the Reign of King John, prout 17 E. 3. 40. and all Archbishops and Bishops of this Kingdom are Regal Commissioners for Ecclesiastical Causes, prout Irish Statute 2 Eliz. c. 4. Each of them having a particular Commission from the King or Qu. or the Chief Governour of Ireland, for the exercise of Ecclesiastical Jurisdiction within their respective Dioceses, 2 Cro. 553. and upon the delivery of the Commission or Letters Patents to them, they may immediately exercise that Jurisdiction before they be Inthroned or Consecrated; as hath been lately declared in a judicial Debate between the present Lord Archbishop of Dublin and the Lord Bishop of Kildare, and therefore Appeals may be made and admitted from Regal Commissioners
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for Ecclesiastical Causes, although they be not compleat Bishops.

In Ireland the Queen's Prerogative-Court (as it hath Jurisdiction of Ecclesiastical Causes) stands erected upon the said Branch in the Irish Act 2 Eliz. c. 1. aforementioned; and this Court was not grounded upon the Metropolitcal See of Armagh; but hath it's foundation on the said Branch; as appears by the Commission granted by Queen Eliz. dated 15 May 31 Eliz. in Offic. Canc. Hib. By which Commission Doctor Adam Loftus then Lord Bishop of Dublin, and Ambrose Forth Dr. of Civil-Law, and the survivor of them, were appointed to exercise Ecclesiastical Jurisdiction within the Kingdom of Ireland by vertue of the Branch aforesaid; and the like Commission dated 10 April 20. Jac. 1. was granted by the King to Christopher then Lord Archbishop of Armagh, who and his Substitute, as the King's Commissaries for Ecclesiastical Causes, were empowered by vertue of that Branch to exercise, occupy and execute under the King and his Successors all manner of Ecclesiastical Jurisdiction in as large and beneficial manner as Ambrose Forth Knight, Charles Doyne and Thomas Rives Doctors of Laws, or any others have exercised that Office; and Michael the late Lord Archbishop of Armagh (by vertue of the Commission and Branch aforesaid) as *Commissarius Curiae Regiae Prerogative pro causis Ecclesiasticis in & per totum Regnum Hiberniae*, substituted and authorized Dr. Marm. Coghill, the present Judge of the said Court, to be Surrogate or Commissary thereof, *ad audiend. cognoscend. & finaliter terminand. omnes & singulas causas, negotia & querelas tam simplices quam duplices, tam ad quarumcunque partium instantiam quam ex officio mero, mixto vel promoto mota vel moenda*. And Appeals and Quereles of Nullities lie from those Regal Commissaries to her Majesties High Court of Delegates of course, and as ordinarily as from the Archbishops of Ireland, or from their Vicars General, or their special Commissaries or Surrogates.

The said Lisburn-Commission was not properly a special Commission Ecclesiastical, or such a Commission having in it sometimes special clauses derogatory to the ordinary and General Rules

Rules of the Canon-Law, which allows the Parties agrieved to appeal from Archbishops, Bishops, Archdeacons and their Commissaries in their Visitations and Inquisitions; but this *Lisburn-Commission* was like to a *General Commission* of Ordinaries: For it authorized Commissioners to Enquire and Redress whatever they should find amiss in the Ecclesiastical State of the Diocese of Down and Connor; and to exercise therein all manner of Spiritual or Ecclesiastical Jurisdiction, which might be Lawfully Exercised by any Ecclesiastical Laws, Customs or Authorities within those Dioceses, and also according to the Laws, Ordinances, Customs and Statutes of Force in this Kingdom; and to Hear and Determine all the Ecclesiastical Offences of Ecclesiastical Persons within the said Dioceses, according to the course of the said Ecclesiastical Laws; and to demand the Exhibition of Faculties and other Titles of Ecclesiastical Benefices, and to Receive Proxy-mony Fees, &c. and they Acted in the said Dioceses *Ex officio suo mero* as Ordinaries thereof, and as having in themselves Radical Jurisdiction in those Dioceses; and they proceeded in their own Names, and under an Episcopal Seal; whereby it appears that the said *Lisburn-Commission* was rather a *general Commission* for Ecclesiastical Causes, and more general in some respects than the Commissions granted by the present Archbishops of Armagh and Dublin to their *Vicars General*, who in their Commissions have *casus reservati*, special causes concerning the Clergy cognizable before the said Archbishops in person; and the authority committed to the said *Vicars General* is only during pleasure; and the special clauses *De plano* and *appellatione remota* (which make *General Commissions* to be *Special* according to the Rule of the Canon-Law, *Generi per speciem derogatur*, *Sext. Jur. Reg. 34.*) were omitted in the said *Lisburn-Commission*; and the Clause (impowering the Queens Commissaries in the Prerogative Court aforesaid, to proceed *ex officio mero*) being also omitted in the said *Lisburn-Commission* rendred it less *Special* than the said Prerogative-Commission; which yet is as a *General Commission* of Ordinary Jurisdiction; because appeals lie of Course from those Commissaries.

The said *Lisburn-Commission* was not made pursuant to the form and tenor of the *Branch* of the *Irish Act* 2 *Eliz. c. 1.* altho' that *Branch* was recited in the said *Commission* as the foundation of it, as afore hath been set forth; for that *Branch* did extend it self to the whole Kingdom of Ireland, and expressly reached *Heresies and Schisms*, as Enormities under the proper *Verge, Jurisdiction and Correction of the Ecclesiastical Commissioners*, and that ordinary Offences were not cognizable before them, as the *Temporal Judges*, in expounding the like *English Act and Branch*, have resolved; in *Moor's Rep.* 460, 607. 1 *Bulstr.* 188. 2 *Bulstr.* 300. 2 *Brownl.* 4, 11, 34, 38. *Gro. Car.* 114, 119, 220. *Hetl. Rep.* 3, 19, 95, 104, 107, 108. *Littl. Rep.* 152, 154, 192, 242, 274. *Co. Entries*, p. 465. *Co. 4. Inst.* 331, 332, 333. *Co. Rep.* 38, 41, 45, 50, 69, 86. But this *Lisburn-Commission* restrained the *Commissioners* within the bounds of the Dioceses of *Down and Connor* aforesaid, and omitted *Heresies and Schisms*; but it authorized the *Commissioners* to act as *Ordinaries*, and as the *Ancient Bishops of the said Dioceses*, in demanding and receiving the *Procurations* of their Clergy; or as the *Commissaries* of the said *Prerogative Court* (acting in pursuance of the *Irish Act* of 28 *H. 8. c. 19.*) were empowered to examine the *Faculties and Titles*, by which those Clergymen held their *Offices and Benefices*. But if the said *Lisburn-Commission* was strictly a *Statute-Commission*, and was made pursuant to the *Branch* aforesaid, the consequences thereof will be considered under the Head of *Nullities*.

As to *Ecclesiastical Jurisdiction*. It issues immediately or mediately from the Crown and the Law; and it is an authority which a man has to do Justice in Causes of Complaint made before him, prout *Termes de Ley*, tit. *Jurisdiction*. *Jurisdiction est Juris dicendi potestas inter partes*, say *Bracton* and *Fleta*, cited by the Lord Cook in the Proem to his 4th *Inst.* There may be an extraordinary and extrajudicial Procedure in Ecclesiastical Causes, but this Procedure is no manner of *Jurisdiction*, or at least it is not properly a *Jurisdiction*. Our Law knows nothing of extraordinary means to redress a mischief; *Shore's Cases*, p. 122. The Law hath establish'd what is an Offence and it's punishment; and

and nothing of Arbitrary Power is allowed in respect of either of them, Id. 137. It is the Birth-right of the Subject to be prosecuted in the Ordinary Courts of Justice, and in the ordinary course of ruled Law, and bounded Jurisdiction, 19 H. 6. 62. Lamb. Archaion. p. 117. The Right of the Subjects, Ecclesiasticks as well as Lay-people, was given to them by the Common Law, and confirmed to them by Magna Charta and numerous succeeding Statutes, and was repeated in the Petition of Right 3 Car. 1. c. 1. and was lately declared by Act 1. W. & M. Sess. 2. c. 2. The Statute pro Clero in 14 E. 3. Enacted, That no Clergyman should be put out of his Temporalities without a true and just cause, according to the Law of the Land and Judgment thereupon given. The said Irish Act 2 Eliz. c. 1. required Ecclesiastical Commissioners to exercise Jurisdiction lawfully, and to correct Offenders lawfully; not by an Irish Brehon Law, which was no Law, but the exercise of Domination and Arbitrary Power, 4 Inst. 358. The Makers of this Act did not intend to put Queen Eliz. or her Commissioners in possession of the extravagant Authority which the Pope and his Delegates had exercised in this Realm and Church of Ireland, Hob. Rep. 46. Shore's Cases, p. 169. They did not intend to Repeal Magna Charta; 12. Co. 46. And the Lisburn-Commission obliged the Commissioners to exercise Jurisdiction, not only by the Ecclesiastical Laws and Customs used in the Consistories of the said Dioceses, but also according to the Laws, Ordinances, Customs and Statutes of force in this Kingdom, as afore hath been intimated; and the said Commission further required the Commissioners to award Punishment and Correction on the Offenders, upon due and sufficient proof of the Offence, by confession of the party, or by lawful Witnesses, or by due Conviction before them, by censures and process, as heretofore hath bin used in the like Cases by the Ecclesiastical Law of this Kingdom; not by the Pope's Decretals, or by the despotick power and Extraordinary Procedure of his Inquisitors; for no Popal Constitution, or any Canon of this Church is of any force here, if it be contrariant to the Common Law, the statutes & customs of this Land, prout Irish Stat. 28. H. 8. c. 13. And those Canons and new Rules, which do derogate from the Ancient Com-

non-Law of the Church, (as those *Decretals* made for *Inquisition*, *Summary Proceeding*, and *Restraint of Appeals*) by the Law are called *Odious*, and ought to be strictly taken, and not to receive a favourable Interpretation ; *Quæ à Jure communi exorbitant, nequaquam ad consequentiam sunt trabenda vel amplianda. Sext. Jar. Reg. 28.*

Inquisitors and Visitors may *Ex officio* *mero* inspect, and make a general enquiry of the excesses and defects, or of whatever is amiss in the State Ecclesiastical committed to their care ; but this *Inquisition* is not *Jurisdiction*, or acting the part of Ecclesiastical Judges ; and therefore no Appeal lies regularly from General Inquisitors, because what they so do is *extra Jurisdictionem, & coram non Judice* : *Ad inveniendum crimen potest fieri Inquisitio per non habentem Jurisdictionem, sed punitio fieri debet per ipsum, qui præest Jurisdictioni* ; *Lynw. p. 17. glos.* In *Inquisitione generali*, quæ fit circa statum unius Ecclesiæ, non requiritur ut fama precedat, sed sufficit processum formari de plano & sine strepitu & sine figura Judicii, maxime ubi proceditur ex officio *mero*, *Id. p. 254. glos. 1.*

The Popish Inquisitors of heretical pravity, and the said High Commissioners Ecclesiastical were much alike ; unless the former may seem to be the more mild. Sir Ed. Deering in his Speech in the English House of Commons, 1 Nov. 16 Car. 1. said, *That with the Papists there was a severe Inquisition, but with us, as it is used, a bitter High Commission* ; in both *contra fas & Jus* they are Judges in their own cases ; yet herein the Inquisitors are better than our High Commissioners ; for they do not seivre in suos ; but with us many scores of Ministers in few years past have been Suspended, Degraded, Deprived and Excommunicated, not guilty of breach of any of our Establish'd Laws, *Rushw. Collect. part 3. Vol. 1. p. 55.* And that Parliament in their Remonstrance declared, *That the High Commission Court grew to such excess of sharpness and severity as was not much less than the Roman Inquisition*, prout Archbishop Laud's Hist. p. 164. The Papal *Decretals*, authorizing those Inquisitors, expressly forbade them to intermeddle with any Crimes which did not manifestly favour *Heresie*, but left them to the Judges ; and the

the *Inquisitors* were properly *Judges* of those whom they called *Hereticks*, and with whom they might deal without the observation of *Judiciary order*, or any form of the *Ecclesiastical Law*; and therefore no *Judicial Appeal* could interpolate from them; for such an *Appeal* must be a complaint against the *Erronious Acts* of Court made in *Judicature*; but the Proceedings of those *Inquisitors*, according to the tenor of their *Warrant*, could not be *erronious*, and therefore not liable to an *Appeal*. *Inquisitores pastis hereticae & sede Apostolica deputati intramittere non debent nisi de iis, qui heresim sapient manifeste*. In *Inquisitionis hereticae pravitate negotio procedi possit simpliciter & de plano, & absque Advocatorum ac Judiciorum strepitu & figura*; & non obstantibus appellationibus; prout *Sexto de Heret.* c. 8, 18, 20. and such a Constitution was made by *Arundel* Archbishop of *Canterbury* against the *Lords* or *Opposers* of the Tenents of the *Romish Church*, A. D. 1408. prout *Lynn* p. 304. But at the Reformation of the *Ecclesiastical Laws* of *England* (began by Authority of *K. Henry the 8th*) Appeals were allowed even in case of *Heresy*; *Appellatio de heresi Rea conceditur ab Episcopo ad Archi-Episcopum, & ab Archi-Episcopo nostram ad Regalem personam*; *Reform.* p. 2216. & p. 26. c. 10. and thereupon many men being convented at *Spiritual Courts* as *Hereticks*, made their Appeals; as *Philip Lambert*, and two *Padmars*, &c. *Fox's Martyrol.* Vol. 2. p. 320, 321, 426, 699. And *Bishop Barnes's Hist. of Reform.* part 1. p. 170, 252. And tho' the *High Commission Court* would admit no Appeal of *Hereticks*, and dealt against *Brownism* as a sort of *Heresy*, 2. *Brownl.* 4. yet the said *Popish Inquisitors* (as bad as they were, and notwithstanding the *Decretals* aforesaid) considered that a just Appeal was a natural defence, which no Power, no Prince, no Pope could take away, 4. *Instr.* 340. *Ipse Papa non potest committere quin ex causa possit appellari*, *Durand. spec.* l. 1. p. 155. n. 6. They did, and do allow Appeals in cases of *Heresy*; *igitur omnia fura regulas transmittendum est Reus, qui appellavit ad sedem Apostolicam cum processu*. Sed in *Italia* appellatio fit ad *Senatum Supremum Cardinalium*; & in *Ditionibus Hispaniae* appellatur ab *Inferioribus Inquisitoribus* ad *Generalem eorum Regno-*

rum Inquisitionem; prout *Paratus de Inquisitione*, p. 606, n. 100, 101. Item, *Zerola Prax. Episc.* part 1, p. 376, n. 14. & p. 690, n. 1. Some Heresies, so called, are not Heresies; St. Paul being charged (tho' unjustly) with Heresy and other grievous Offences before *Cæsar's High Commissioner*, was allowed to appeal from him; and if Appeals are not prohibited in case of Heresy, they may be admitted in non-payment of Proxy money, non-exhibition of Ecclesiastical Titles, and Parochial non-residence; which in many cases are lawful and necessary, as in this *Petitioner's Case*, if the said *Lisburn-Commissioners* had cognizance of those matters.

The Office of the General Inquisitors was instituted by Pope Innoc. the 3d. to supply the negligence of the Popish Bishops in persecuting the Professors of the ancient Christian Religion, prout *Primate Usher De Christian. Eccles. Succes. & Stat. c. 9.* & *nullum malitia Diabolica instrumentum Ecclesia Dei experta est nocentius quam Innocentium tertium*; *ibid.* Yet this Innocentius in his Decretal to the General Inquisitors, told them if they exceed the order prescribed to them (seeing they were men, and subject to such excesses or mistakes) they ought to correct their own Errors, and not be ashamed of amending them; for otherwise their acts would be declared Iniquities and Nullities by a Superior Judge, and those whom they had wronged, would be righted by Law; *ne inde nascentur injuria unde Jura nascuntur, quoniam Ex his quæ inordinate sunt acta, non potest ordinabiliter agi*; prout *Extra. lib. 5. tit. 1. c. 17.* But if no Appeal lay from their Proceedings as extorsions, yet it lay from their substantial Errors in Judiciary Order, or their acts exceeding the limits of their Commission, as in intermeddling with matters, which were none of their business: *Ea quæ sunt a Judice (si ad ejus non spectant officium) viribus non subsistunt* *Sent. Jur. Reg. 26.*

The General Inquisitors and High Commissioners might meddle with notorious Criminals and relapsed Hereticks; but these being cited and condemned by declaratory Sentences, could not regularly Appeal, because their Appeal (tho' made *viva voce*, and interposed within the fatal and in scriptis) was not

not an Appeal, but a frivolous complaint to stop further execution; for they had *ipso facto* incurred the penal Sentences of the Law, and thereby became executioners of themselves, and these declaratory Sentences were only executory Precepts of that Law, to which they were parties, and gave their consent, and against which their new Protest or Appeal ought not to be admitted: Such Appellants were not unjustly aggrieved; for the pretended grievance of the Law is no grievance; and their Appeal would be of no benefit to them; for the Judge *ad quem* must declare the same Law, and thereupon give the same Sentences the Judge *a quo* had done. And in those notorious cases the said Inquisitors and Commissioners were not Judges, if those Criminals and Hereticks became convicted and confessed by the notoriety of their facts; for otherwise they had denied and contested it; *Nullæ sunt partes Judicis in confessum, nisi ut ferat sententiam* Sext. l. 5. tit. 1. c. 1. in casu & glos. a. *Cum offensa sit notoria, probatione non eget; nec ibi sit necessaria sententia super crimine vel injuria; nec est hic Judex in sua causa, sed executor pænæ*; prout Innoc. super 5. Decretal. c. Ex parte. In notorio non requiritur, nisi citatio et Judicis sententia, vel potius executio; Piasec. Prax. Episc. p. 317. n. 4. *Judex in notorio non est Judex sed potius executor, nec requiritur causa cognitio, nec alia sententia quam declaratoria; cum notorium habet in se sententiam Juris inclusam*, Lynw. 98, 312, 325, & Otho, p. 50. and the temporal Judges in the like cases speak to the same purpose; viz. That if an offence is done in the face of the Court, the view is in Law a conviction of the Offender, 13 H. 6. f. 10. and that when notorious and erroneous cases came before the High Commissioners, if a citation was requisite, there needed no Libel or other Process, Moor's Rep. 576. March. 99. Cro. Jac. 37. And thus when Cawdrey had Preached against the Book of Common-Prayer, upon this notorious evidence of the fact the High Commissioners, by force of the Act of Uniformity (upon which their Commission was partly grounded) deprived him of his Parsonage in his absence, and by one only Citation; Poph. Rep. 60. and Co. 5. Rep. 2. and they also deprived Smith in Moor. 781. and Huntly in 2. Leon. 176. being Non-conforming Ministers,

nisters, who had not subscribed the 39 Articles of Religion, or persisted in impugning those Articles, or the Rites and Orders of the Church; and those Ministers (if they had not subscribed the said Articles) never were lawful Incumbents of the Ecclesiastical Benefits they had usurped, *Dyer* 377. and in those cases the High Commissioners, as General Inquisitors, and as they were expressly authorized by the Statute 13 *Eliz.* c. 12. might make declaratory Sentences of Deprivation against those Ministers; and to reject the Appeals made from those Sentences, because they were the Sentences of the Law, unless the Ministers in their Appeals shewed plainly that the Commissioners had declared amiss the sense of that Statute: and therefore the 98th Canon of the Church of England decreed, *That no Judge ad quem should grant any Inhibition, or admit any Appeal for obstinate and factious Appellants, until they first subscribe to the three Articles specified in the 36th Canon; implying that when they so subscribe, then their Appeal would be allowed.*

An Appeal does lie in a special or solemn Inquisition, even in notorious criminal Causes; that is, when those Causes are brought into judiciary cognizance: for special Inquisitors are Ecclesiastical Judges, and by giving definitive Sentence in these Causes they decide the Controversy, viz. the reality of the Crime, and the notoriety of the Fact, which the Offender, by his contest before the Judges, had denied; and of which they were doubtful; and they may still be in mistake, for their said Sentence is but their judicial Opinion; and what they thought was a crime or notorious may be adjudged otherwise by the Superior Judges and Delegates upon the Appeal: *Potest contingere quod aliquid est notorium apud Delegatum quod non est notorium apud Delegantem, et si causa audiretur coram Delegante, ille procederet secundum ordinem Juris, sed Delegatus non, prout Decretum 2. q. 1. c. 17. c. si Reus crimen negat notorium, ordo Juris servari debet, licet Judex et alii multi sciunt; ibid. c. 20. In notoriis semper servandus est ordo Juris quoad sententiam. Extra. l. 4. tit. 19. c. 3. glos. d.* In such case of notorious causes, the Appeal, expressing the grievance of the Sentence, ought not to be deni-

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denied ; as hath been said afore ; and may be proved by the Law ; *Appellare licet post sententiam super manifesto & notorio crimine ; & notorius criminofus & confessus in Jure auditur appellans, si exprimeret causam rationabilem* ; *Sext. de app. c. 3. Sect. 6. glos. b. e. Clem. l. 5. tit. 11. c. 2. Othon. p. 50. Lynw. p. 325. Marant. Spec. de app. n. 293. Durand. Spec. l. 2. de app. p. 833. n. 13.* And altho' the Law in some cases do prohibit notorious Criminals to appeal from definitive Sentences, yet by the above Authorities it appears that such Criminals must be both confess and convict in Court ; for their free and deliberate confession in Judicature is one sort of notoriety, viz. *notorium Juris per confessionem* : and therefore the Civilians and Canonists say, *Hec tria concurrere debent ad hoc ut in crimine Reus non debeat appellari, sc. quod sit confessus, testibus convictus et argumentis superatus ; et nisi omnia ista concurrant, reservatur condemnato beneficium appellandi* ; *Cod. l. 7. tit. 65. c. 2. Decretum 2. q. 6. c. 41. Sect. 7. Nullus.* And *Sext. ut supra.* And if the Law allows Appeals from definitive Sentences in notorious causes, there needs little labour to prove that Appeals lie in criminal causes which are not notorious ; *Qui de crimine impetitur, appellare potest, nisi sit notorius, Decretal De app. c. 5. Convictus super adulterio appellare potest, nisi sit notorius, Ibid. c. 13. Sciant cuncti in capitali supplicio damnatis appellationem esse concessam, Cod. l. 7. tit. 65. c. 30. Decretum 2. q. 6. c. 20. Durand. Spec. l. 2. p. 829. n. 10. Lancelot. de Attent. p. 193. n. 4, 10. and p. 194. n. 1. Lynw. p. 106, 107.* And the English Reformers of the ancient Ecclesiastical Laws confirmed those Canons, which allowed the appealing from definitive Sentences in criminal causes ; *Illis decem diebus a lata sententia, quibus appellare licet, Judicatum non mandetur executioni ; quod non modo in civilibus, verum & in criminalibus observari decernimus ; volumus etiam ut in ipsis criminalibus, etiam invito condemnato, quivis alius pro eo posset appellare* ; *Reform. p. 289. c. 31.*

It hath been and may be said, that Visitors have more privileges, and greater power in Jurisdiction than other Ecclesiastical Judges : as if Archbishops, Bishops and Archdeacons (who cannot deprive their Clergy in their Consistorial Courts

otherwise than by the forms and according to the course of of the Ecclesiastical Law) may deprive them *summarily* and *arbitrarily* in their *Visitations*; whereby the *Subjects* may seem *Freemen* when they are cited by the *Ordinaries*, but are *Slaves* when they are *convened* before their *Visitors*: But the *Irish Statute* 2 *Eliz.* c. 2. makes no distinction between *Visitors* and *Ordinaries*; but ordains that all and singular *Archdeacons*, as well as *Archbishops* and *Bishops* and their *Commissaries* and other *Ordinaries* having any peculiar Ecclesiastical Jurisdiction, shall have full Authority by vertue of that Act, as well to enquire in their *Visitations* and *Synods* and elsewhere, as to take *Accusations* and *Informations* of all and every thing specified in that Statute and perpetrated within the limits of their Jurisdiction; and to punish the same by *Admonition*, *Excommunication*, *Sequestration* or *Deprivation* and other *Censures* and *Processes* in like form as heretofore hath been used in like cases by the *Queen's Ecclesiastical Laws*: and the like words are recited in the said *Lisburn Commission*, which required the *Commissioners* to *Visit*, *Enquire*, *Hear*, *Determine* and *Punish* according to the *Statutes*, *Laws* and *Customs* of the *Realm* and of the *Church* as aforesaid; and since *Visitors* have their partialities and mistakes, as *Ordinaries* and other men have, they are alike liable to appeal. And observe, By this Statute the *Visitors* are to *take*, not to *make* *accusations* against their *Subjects*; but they are not to be *Accusers* and *Judges* in their own cause.

True it is, *Visitors* of some *Colledges* and *Cathedrals* are empowered by their *Local Statutes* (tho' repugnant to the *Statutes of the Realm*) to remove their *Heads* and *Members* out of their *Foundations* and *Freeholds*, without proceeding against them by form of *Law*, and without redressing them in their grievances, by any ordinary remedy; whereby they might destroy whom they ought to edify, thus reforming them into *privation*; as the *Visitors* of *St. Magdalen Colledge* did at *Oxon.* A. D. 1687. But such *Statutes* and *Privileges* are *privata leges*, and *By-laws*, invented by *Pope Innocent* aforesaid; and brought into these *Realms* first to keep the *Regulars* under the

the swing of an Ecclesiastical Flail, and then to introduce arbitrary power over the Secular Clergy, who yet enjoy'd the benefit of the common Laws of the Church and of the Land; *In Inquisitione circa seculares servandus est ordo Juris; sed de plano & sine strepitu Judiciorum debet precedi cum Regularibus, qui facilius & liberioris & suis possunt administrationibus amoveri*, *Lex. ma. l. 5. tit. 1. c. 24 & 26*. But it is unreasonable to suppose a Visitor not restrained; or that his acts, exceeding the limits set him, should be binding and conclusive; *Shore's Cases, p. 25*. A Judicature *absque ulla appellationis remedio* (said the Lord Ch. J. *Bridgman*) is expounded, not to hinder an appeal to the Bishop or to the King, 2 *Keebl. Rep.* 170. Custom, tho' in some cases it be stronger than Law, cannot hinder a remedy against wrong, and an appeal lies from the Visitor, if the Visitor be Ecclesiastical and an Ordinary; 1 *Mod. Rep.* 83. an Appeal lies from his sentence of Deprivation; *Shore's Cases, p. 43, 45, 46, 48*. but an Appeal does not lie from the Sentence of Deprivation given by a Visitor, who is a Founder or Patron of a Colledge, *ibid.* because such an Appeal is not an Appeal, or an Ecclesiastical remedy; and such Visitor is not an Ecclesiastical Judge or Visitor; and his Sentence is not an Ecclesiastical decree, nor is the foundation a spiritual Corporation; and therefore the party, being wronged by such Visitor, may have an Assise or other relief at the Temporal Law and in the Temporal Courts, but not an Appeal, *Id. Shore, p. 52. Dyer 209. 11. Co. 99. Lath. 299. 2. Jones 174. 3. Mod. 265.*

Every Bishop, as he is a spiritual Father, is the natural Visitor of his Diocese, 3 *Mod. Rep.* 265. And he may correct those that are his Sons after the common Faith; but a Bishop must be no striker, *Tit. 1. 4. 7*, otherwise an Appeal lies from him, which is a natural defence, and ties up his hands, *Ridley's Viow, p. 34*. And as the power of Parents over children is qualified and restrained by the Laws; so Bishops in their Visitations and Proceedings *Ex officio & in negotio correctionis*, may correct lawfully; and tho' no Appeal lies from their Visitation, if they visit lawfully and according to the Rules of the Law; yet if they exceed in their correction, the party grieved may lawfully appeal

appeal from *that* and from *them*. Archbishop Laud in his afore-mentioned Excellent History, p. 300 says, *That Mr. Burton when he was called into the High Commission, appealed to the King, and pleaded his Appeal; and thereupon the Commissioners writ to the King to have him submit to the Court; and that he was dismissed upon his Appeal, till his Majesty's pleasure be further known; and that the King declared that he should submit to the Court; and because Burton would not submit, he was censured, notwithstanding his Appeal: for the Commissioners had power to do what they did; and if they had not done so, what a breach this would make upon the Jurisdiction of the Court; and therefore he well deserved the censure, since he would not be ruled by his Majesty to whom he had appealed.* But the Irish High Commissioners Ecclesiastical in the year 1641 decreed *That Dr. Adaire, then Bishop of Killala and Achonry, should be deprived of his Bishopricks ob verba seditiosa;* and thereupon his Metropolitan, the Archbishop of Tuam with the Suffragans of the Province, gave the Sentence of Deprivation against him: The said Bishop might have appealed to the Delegates from that Sentence of the Archbishop by vertue of the English Statute of Appeals 25 H. 8. c. 19. But because the Sentence (being given upon general and uncertain matters in a criminal cause) was a null act, he needed not, and did not appeal from it; but complained thereof to the King, who being assured of the Bishop's Innocency in that case, wrote to the then Lords Justices and Lord Chancellor of Ireland, authorizing and requiring them and all his Officers to whom it might appertain, to cause all Sentences, acts and things whatsoever registred against the said Bishop to be quite taken off the File, so as no Record might remain or be extant hereafter concerning the same; prout King's Letter Enrolled in Offic. Rot. Cant. Hibern. dated 7 June 17 Car. 1. and in Sir James's Comment. de Prasul. Hibern. p. 105, 272. and in Sir Rich. Cox's Hist. of Ireland, part 1. p. 60. but the High Commissioners, properly speaking, were not Visitors or Ecclesiastical Judges.

Visitors of a Diocese or Province are Overseers of the State Ecclesiastical, and upon enquiry and fame of an ordinary offence committed within their Jurisdiction, and cognizable

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nizable by the Ecclesiastical Law, they refer it and the Offender to the Consistorial Court: but if the Offence be Heresy, or other notoriety enormity, and the Offender cannot reasonably deny or excuse it; the Visitors having cited him, may execute the penalty of the Law against him by their declaratory Sentence: which is practicable according to the ancient Constitutions afore mentioned and also the Canon in *Sext. l. 2. tit. 20. c. 1. Sect. 5.* *Archiepiscopus Visitans, si de aliquibus orta fuerit infamia, contra eos Ordinarius ipsorum (ut super his solemniter inquirant) denunciaret: notoria vero crimina, quae examinatione non egeant, libere corrigat, poenam pro illis debitam infligendo.* In those notorious Causes, the Visitors are almost meer Executioners; and yet Appeals lie from them, if their execution be excessive: *Ab executione Sententiae appellari non potest, nisi forte executor sententiae modum judicationis excedat, Decretum. 2. q. 6. c. 41.* Non appellatur amero executore, nisi modum excedat; maxime si est datus cum clausula appellatione remota; quia nullam habet cognitionem, *Extra. de app. c. 43.* Si non est merus executor bene possit appellari ab eo. *Ibid. glos. d. Audietur appellans, ubi adversus eum modus executionis canonicus excedatur, Decretal. l. 2. tit. 27. c. 15.* And the Expositors of this Decretal say, That the execution may be excessive and appealable in eight cases there recited; of which the first (chiefly concerning the Petitioner's case) is this; *Judex potest excedere mandatum faciendo quod mandatur, & plus aggravando illum contra quem fit executio; & tunc tenet sententia, unde necessaria est appellatio; Ibid. glos. f.* If the Visitors have full Authority and Jurisdiction over a Clergy man, and proceed against him by way of special Inquisition and correction pro salute anime, they cannot in this case deprive or suspend him from his Ecclesiastical Benefice: for such a sentence of Suspension or Deprivation, punishing him in his Temporalities, is repugnant to their purpose, Process and Declaration, which was to afflict his Spirit and Soul, and impose on him Penance; but a Sentence of Deprivation is not a Spiritual or Ecclesiastical Censure; *Extra. l. 5. De verb. Signif. c. 20. & Lym. p. 91. glos. 1.* and this Procedure is contrary to the Rule in the 4th General Council of Lateran, c. 8. (inserted in

in the Body of the Canon Law, *Extra. l. 5. tit. 1. c. 24. in fin.* which directs *Visitors* how to proceed in their *Solemn Inquisition*; *Sententia semper formanda est juxta modum agendi*: but in this case, as the Canonists speak, *non aeternum est ad hoc*. And it is a *Maxim* in the Law, that no man, holding an Ecclesiastical Benefice in title, can be deprived of it by Inquisition; tho' the crime, charged on him, be fully proved; unless that crime be so enormous, which *ipso facto* disabled him, even after penance performed: *Extat axioma Juris in materia Inquisitionis Quod licet Judici constet de crimine per viam Inquisitionis, non potest Reum punire pena Ordinaria, nisi in casu heresis, in quo Inquisitores procedant per Inquisitionem generalem, Paramus De Inquis. p. 730. n. 45.* where he cites *Extra. de Accusat. c. 21. Innoc. Jul. Clarus. Anan. Felin. Tiriquil. and Scaccius*. Correction is intended for Amendment, but Deprivation is a Destruction; by it the Living is void as if the Beneficer was actually dead; *Sententia deprivationis cruenta est, & totum conficit bonitatem, Reformat. p. 158.* Archb. Laud says in his Hist. p. 383. Church men would be in a miserable condition for their livelihood, if they may be deprived by Canons for crimes without legal proceedings; No (says that Great and Wise Man) God forbid: for even in case of Simony (which by the Canon Law is worse than Heresy, Treason, or any crime, 1. q. 7. c. 27.) it must be tried and judged, before the Incumbent be deprived; and Excommunication is in many cases in Law and *Ipso facto* void, till the Sentence be orderly pronounced.

Visitation is not intended to be a Vexation to the Subjects (as the Irish Stat. speaks of some Visitors in 28 H. 8, 19 p. 118.) but is appointed rather to amend than to punish & destroy. Visitors are to enquire and correct after the Laws of Holy Church, 2 H. 5. c. 1. As Ghostly Fathers, rather than as Masters or Lords; *Visitatio potius fit per modum fori penitentialis quam contentiosi; nec in ea precise puniendi finis est intendendus, sed corrigendi & salutaris penitentia injungenda; Piafec. p. 246. n. 5.* Canonical Penances are *medicina animæ*, and the Party censured sustains no loss, but gain, viz. reformation and amendment, says Dr. Cousins in his Famous Apology for Ecclesiastical Proceedings,

Part 2. p. 78. The Irish Act of Uniformity afore recited did not empower Visitors upon enquiries in their Visitations to punish by Deprivation or Sequestration, but upon accusations; and the Canon Law requires Visitors to inflict on Offenders Corrections and Censures milder than the Law had appointed in the case for their punishment, *non potest punire delinquentes pena ordinaria à jure statuta sed pena extraordinaria, quæ in ipso respiciat emendationem quam correctionem*, Veneri l. x. m. Episc. p. 133. n. 48. & p. 156. n. 28. Cum proceditur ad correctionem anime non agitur ad penam Canonicam juxta qualitatem criminis vel delicti infligendam, sed solum ut delinquens præter talem penam, emendetur de crimine, says Lynwood, p. 129. glos. y. and so says the Law in Extra. l. 5. tit. 1. c. 21. Marant. Spec. p. 42. n. 36. And therefore when Visitors or Special Inquisitors impose a penalty, it must be arbitrary, that is, less than the ordinary punishment prescribed by the Law as aforesaid, and in that case the party grieved may lawfully appeal from them; *Ubi pena relinquatur Judicis arbitrio, à tali imposita potest appellari*, Extra. l. 5. tit. 1. cap. 16. glos. i. And if they proceed against the Offender pro correctione morum in a judicial manner, an appeal lies from them, as well as for a suspensive as for a devolutive effect; and a Congregation of Bishops in the like case made their Decree in Rome A. D. 1600, *Cum visitator citata parte & exhibitâ causa cognitione judicialiter procedit, tunc appellationi locus est etiam quoad effectum suspensivum*; Piasec. p. 343. *Correctio morum non intelligitur correctio, quæ fit servato judiciali processu, in quo licitè appellatur: Et ubi in correctione excedatur modus, ab hujusmodi excessu possit appellari*, Idem p. 245, 246. and thus the rigorous Canon of the Tridentine Council, *In causis Visitations, correctione morum, & criminalibus executio sententiæ appellatione non suspendatur*, Conc. Trid. Sess. 13. c. 1. & Sess. 24. c. 10. (tho it never had any force here) was so expounded by the said Decree, as not to exclude just Appeals from Visitors: But the General Council of Lateran afore mentioned (where were the Representatives of the Church of Ireland) allowed the Secular Clergy to appeal from their Visitor and Inquisitor, *if he exceeds the form of his Office*, Extra. l. 1. tit. 3. c. 13. Potest

Potest appellari in Inquisitione, sicut in correctione à gravamine; sc. ubi inquit super quo non præcesserat infamatio; vel admittit testes conspiratores, vel non citat illum, contra quem inquitur; vel in aliquo excederit formam Inquisitionis, Ibid. c. 12. glos. f. h. In Inquisitionibus circa seculares, sicut in aliis Judiciis ordinariis, servandus est ordo Juris, Extra. l. 2. tit. 1. c. 19 and tit. 8. c. 1. and tit. 27. c. 22. and tit. 30. c. 4. and l. 5. tit. 1. c. 22. and c. 24. b. Durand. Spec. l. 3. p. 28. n. 8. 31, 32, 37. And notwithstanding some Papal Decretals, as hath been mentioned before; yet the Canon Law doth allow even Regulars to appeal from their Visitors, if they be excessively corrected; Non modo Clericus secularis, sed etiam Religiosus possit appellare, si contra regulam suam gravaretur, Extra. de app. c. 31. Othon. p. 45. Marant. Spec. p. 373. n. 333. And the Reformers of the English Ecclesiastical Laws do allow appeals from Visitors, Reform. p. 127. c. 8. A sententia censurarum, aut correctionis, ubi modus excedatur; aut ubicunque damnum aut gravamen illatum per appellationem à diffinitiva non est reparabile, appellare & etiam querelari ante sententiam diffinitivam licebit, Id. p. 213. c. 10. And this is the present practice in the Ecclesiastical Courts in England and Ireland; Appellari potest à gravaminibus Judicis in causa correctionis, tam ex officio Judicis, quam ad instantiam, vel promotionem partis; Clarki prax. tit. 249, 251.

The proceedings of Ecclesiastical Visitors or Judges Ex officio suo mere & promote, by cognizance of the cause to a definitive sentence of Deprivation, is a contradiction in terms; a meer office cannot be a promoted office of the same cause in the same acts of Court. Officium merum cum officio jus dicentis nihil commune habet; sed à Jurisdictione sejunctum est & omnino separatum, prout Galv. Lex. Jurid. tit. merum. This proceeding by meer office of the Judge is informative and preparatory to Jurisdiction or to his Judicial acting as a Judge; as afore had been proved: Procedere ex officio mere est quando Judex à seipso & ex officio assumit informationes contra delinquentem; Jul. Clar. in Pract. in Crim. q. 3. And Dr. Cousins afore-mentioned says, That the meer office is when no Persecuter at all doth stir in the matter, but the Court does it of duty without the instance or petition

of any Party, even of a necessary promotor of Office; Apol. part. 2. p. 36. And the Civil Lawyers say, That the proceeding by Noble Office is a sort of Persecution, and the Office of an Executioner and not of a Judge acting judicially; *Nobile officium Judicis (quod J. C. ti appellat Persecutionem) a solo Judicis executivo officio pendet; & hęc Judex nunquam defungi potest; Calv. Lex. Jurid. verb. Nobile.* In the year of our Lord 1534 The House of Commons of England presented to K. H. 8th their complaint against the Spiritual Courts for calling men (tho in case of Heresy) before them *Ex officio mero*; and laying Articles to their charge, without any Accuser or Presentment; as contrary to what was practised in all other cases, even of Treason it self: whereupon the Statute of 25 H. 8. c. 14. was made, declaring, That it did not stand with right order of Justice or good Equity, that any person should be convicted and put to loss of life, goods or good name, upon the Suspicion or fantasy of an Ecclesiastical Judge without legal Process, and due accusation or presentment of two persons at least, prout Burnet's Hist. of Reform. part. 1. p. 116, 147. And the Historian says, That this Statute was a regulation of the arbitrary proceedings of the Spiritual Courts, and a particular blessing to all that favoured Reformation, *Ibid.* p. 147. And the Lord Ch. J. Cook says, That the afore-recited part of the said Statute was declaratory of the ancient Law of the Land, 2 Inst. 658. 12. Rep. 27. In the 26th of the 39 Articles of Religion it is declared, That upon enquiry made of civil Ministers, they being accused by those that have knowledge of their offences, and being found guilty by just Judgment are to be deposed; not by meer and noble office, or upon enquiry only; nor by judgment unless it be just; And the Canons of the Church of England and Ireland, viz. Eng. Can. 109, 116. Irish Can. 61, 66. ordain that notorious crimes are to be certified into Ecclesiastical Courts by presentment of Church-Wardens; and if any godly disposed person, or any Ecclesiastical Judge, upon knowledge or notice given to him or them, of any enormous crime within his Jurisdiction, may move the Minister, Church-Wardens or Sidemen to present the same, if they should find sufficient cause to induce them thereunto: but the said Judge is not empowered by those Canons

or by any other Law to *invent* or *frame* accusatory matters against a Clergy-man, and to *present* them into his Court, and thereupon *subscribe their own Articles* against him, and *prosecute* his said Office, and *word* the depositions of his witnesses against him, and give his definitive *Sentences* against him, and *condemn* him to pay the *expences* of the said Office; It cannot be imagined (let the Clergy-man be never so innocent) that this Judge will condemn himself as a Calumniator or false Accuser, and decree costs to the Clergy man against himself. A proceeding of Ecclesiastical Judges *officioso*, out of their own head and mind, is not *warrantable*, said the Temporal Judges in 2 *Ventr. Rep.* 42, 44, and that a proceeding in the Ecclesiastical Court, *Ex Officio*, without *libel*, is without cause, 1. *Ventr.* 87. And tho' the said *Lisburn-Commissioners* had no *warrant* by their Commission so to do, yet they proceeded against the Petitioner, as Archdeacon and Prebendary by their pretended *meer and noble Office*, and prosecuted him in the same Action at the same time by their said Office, and also by the *servile and mercenary Office* of a Promotor and Proctor, in 24 Courts within 28 days of one month; which Courts they held against him under the style of *Officium Dominorum merum & nobile*; and likewise at the same time they prosecuted him as Chancellor of the Dioceses aforesaid in 36 Courts; and by their said *meer and noble Office*, at the instance of the said Promotor, they gave against the Petitioner pretended *definitive Sentences*, suspending him from his said *Prebend* and *Chancellorship*, and depriving him of his *Archdeaconry*, *propter commissa, permissa sive neglecta*, for *alternative* and *ambiguous* matters; and notwithstanding his *Appeal* duly interposed and exhibited in Court before them, they taxed on him their own *Fees* payable with the *expences* of their said *noble Office*, in which they had condemned him; and thereby they demonstrated that they were not *High Commissioners Ecclesiastical*; for those by their Commission were to have no *Fees* at all, but served at their own charges, as the said *Dr. Confus* certified in his *Apol. Part. 2. p. 94.*

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The Clause (inserted in some Papal and Regal Commissions, *Authorizing the Commissioners to Act and Decree in Ecclesiastical Causes, Simpliciter, summarie, de plano, et absque omni forma et figura judicii et omni appellatione remota*) is a *Prerogative Clause*, and was not granted to the said *Lisburn-Commissioners*; but was purposely omitted in their Commission; because this Clause would have made a *Temporary Suspension* of the Laws, and the Execution of them, by Regal Authority, without Consent of Parliament, which was declared *Illegal* by the Bill of Rights: But this Commission required the Commissioners to proceed as Ordinaries, lawfully, and according to the course of the Ecclesiastical Laws of force in the *Consistories* of this Kingdom, as aforesaid hath been often repeated, and must be insisted on, as a main Hinge upon which this Argument will Turn; for Appeals lie of Course from Ordinaries: and tho' the said *Lisburn-Commissioners* were *Extraordinary Judges*, viz. Bishops appointed to exercise Ecclesiastical Jurisdiction out of their own Dioceses, yet by this Commission they were appointed to be only Ordinaries, and to exercise that Jurisdiction in the Dioceses of Down and Connor in the same Manner and Form of Law, which they did or ought to do in their own Consistorial Courts; and therefore they ought to have deferr'd to the Petitioner's Appeals at *Lisburn*, as they would have done, if he had been Prosecuted in their Consistories at *Trim* or *Derry*.

None but the Prince or Supreme Ordinary can grant to Ecclesiastical Commissioners a power to exercise Jurisdiction summarily & de plano, and he never commits that power implicitly or without determinate words in the Commission; because it is a Suspension of the Ecclesiastical Laws, and such a Prerogative no Subject can execute without express Warrant of his Prince: *Le Roy ne peut grant Prerogatives implicite, 2 Henr. 1. f. 13. Litt. Rep. 116. Hob. 243, 244. Solus Princeps & non inferior potest committere causam summarie; quia est contra jus commune causam committere summarie: & nunquam summarie committit, nisi expresse; Marant. spec. p. 111, 112 n. 3, 5, 7. Rebuff. in Reg. Canc. p. 563.* which likewise is the decision of

of the Lords of the Rota in this point; who say further, *Si princeps voluisset procedi summarie, hoc expressisset, Rota in nov. decis. 358.* Certum est, quod à jure communi certus est ordo Judicarius introductus, qui debet observari in examinatione causarum tam civilium quam criminalium: absurdum est dicere quod minor legem majorum tot vigiliis & laboribus adinventam tollere possit: Beneficium Juris nemini denegari debet: Inferior à Papa non potest cognoscere de aliqua re, vel eam committere de plano, summarie, sine strepitu & figura Judicii: Delegatus à Papa, licet in causâ sibi delegatâ major sit Legato, tamen tenetur ordinem judicarium observare: Contra inferiores à Papa non servantes juris solemnitates prodita sunt appellationum remedia: Quod substantiale est in processu, etiam de consensu partium omitti non potest; Qui potest procedere sine figurâ, nullum ordinem judiciorum servare tenetur: In generali demandatione non videtur mandatum, quod simpliciter demandaturus non fuisset: Solum Princeps potest jus alterius auferre: These are the resolutions of the Canonists in their glosses on the prerogative clause aforesaid, *Sext. l. 5. tit. 2. c. 20. in casu & glos. q.* The Pope himself (tho by the plenitude of his Power is said to have in the scripture of his Breast all Laws, and may dispense or suspend them at his pleasure; *18 dist. c. 7. b. & Extra. l. 2. tit. 14. c. 8.*) yet he cannot hear and determine Ecclesiastical Causes of ordinary cognizance without the observation of judicary order: In causis, quæ summi Pontificis Judicio deciduntur, & ordo Juris & vigor equitatis est subtiliter observandus; cum in similibus casibus ceteri teneantur similiter judicare; *Extra. l. 2. tit. 1. c. 19.* Non est verisimile Dominum Papam totam juris observationem tot laboribus ac multis vigiliis excogitatam unico verbo tollere velle; *Extra. l. 1. tit. 3. c. 18. glos. i.* The Pope cannot, and less may his Ecclesiastical Commissioners, deprive a Clergy-Man of his Benefice without legal process and just cause, tho' the Commission empower'd them so to do: for a Commission contrary to Law is to be consider'd as surreptitiously obtained: Neque Princeps neque Papa potest quem privare beneficio suo sine causâ cognitione, & sine justâ causâ, *Barbos. Rep. p. 271. 300.* Privilegium etiam à Principe impetratum, per quod privetur quis sine causâ cognitione usu possessionis, tanquam surreptitium non valet, seu

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feu tanquam rationi obvium est revocandum, Extra. l. 2. tit. 16. c. 1. A procedure *de plano* and *extrajudicialiter* is all one, *D'Ewes Journal*, p. 23. and is alike unlawful, unless in those cases, in which the Law expressly allows a summary Process. *Propter formam Rescripti non est recedendum à jure communi, nisi constet Papam aliter voluisse; Extra. l. 1. l. 3. c. 18. Partes non possunt facere quod procedatur summarie in ordinariâ causâ; quia quod ordinariè procedatur est Juris publici, & partes non possunt juri publico renunciare; Clem. l. 5. tit. 11. c. 2. in fin. glos. u. and Marant. Spec. p. 137. n. 213.* and even in this summary proceeding, only *frustratory Appeals* are prohibited by the Law; *Clem. ut supra.* And a Judge is more faulty for acting contrary to right order of Law, than to Justice; *Plus inficit injustitia ex ordine quàm ex causâ, Vant. de Nullit. p. 391.*

In criminal causes of Ecclesiastical ordinary consens the Proceeding must be *plenary* and not *summary*; especially when it tends to *deprive* or suspend a Clergy man of his *Benefice*, which is his *Living* or *life*; The Judge in this case must observe strictly the *ordo Juris*, the Rules of the Law, the course and forms of the Consistorial Court, and the proof of the crime must be clearer than mid-day light. *Nullus sine ordine judiciario damnari valeat,* is a Rule in the Body of the Canon-Law, 2 q. 1. and there it is proved by numerous Authorities of Law, *ibid. ad cap. 15.* And this Rule and those Authorities are confirmed by the Protestant Reformers of the Ecclesiastical Laws; *In criminalibus non notoriis ordinem Judiciorum observari volumus: De crimine Judiciorum ordinem severissime servari volumus; etenim error in his non potest esse nisi nocentissimus: In criminalibus propter periculum acerrima investigatio adhibeatur, neque in illis pronuncietur, nisi cognitio causa habeatur plenissima, & probationes fuerit ipsâ luce clariores; Reform. p. 179, 181. and p. 182. c. 3.* And therefore Ecclesiastical Judges, in prosecuting and depriving the Clergy of their offices and livelihood *de plano*, or by meer and noble office, upon uncertain or insufficient grounds, exercise authority over their Brethren as *Gentile Rulers* acted over their *Vassals*; which procedure

cedure is expressly forbidden to those Judges by their divine Lawgiver in *Mat. 20. 25*. And the Bishops Courts are in Law called Courts Christian, *quia ibi servantur leges Christi*, *Lyw. p. 97. glos. f*; but a proceeding and sentencing *De plano*, does import tyranny, or an Heathen despotick domination; *Hec verba summarè, simpliciter & de plano, sine strepitu & figura Judicii important omnes solemnitates Juris positivi sublatas esse, & causam decidi solum juxta merum jus gentium, et expediri manu regia, prout olim tempore juris gentium*, *Marant. Spec. p. 112. n. 8.* and yet in that case Appeals lay, as Gentile Festus afore-mentioned deferr'd to St. Paul's Appeal; and much more are Appeals to be allowed, when the procedure is ordinary and plenary.

The Prerogative Clause *appellatione remota* (which was inserted in some, but not in all Papal or Regal Commissions) is such a super-ordinary power given to Commissioners in the exercise of Ecclesiastical Jurisdiction, that only the Supreme Ordinary or Prince doth or can grant it to them; and he never grants it, but in express words in the Commission, *Solus Princeps potest committere causam appellatione remota; quia est privilegium Principis; Extra. l. 1. tit. 29. c. 27. g. and tit. 30. c. 4. k. Solus Princeps utitur ista clausula in delegationibus. Marant. Spec. p. 86. n. 76.* This clause is indeed as a suspension of the Statutes and Canons of Appeals; which generally are allowed throughout all Christendom, as the declarations of the Common-Law of the Church; yet this clause in Ecclesiastical Commissions was like to the *non-obstante statuto* formerly current in the King's Grants; *4 Inst. 135.* These *non-obstantes* were first brought into these Kingdoms by Pope Greg. the 10th in his Commissions granted to his Legates and Delegates; at which the Subjects were amazed in *A. D. 1249*, and thereupon King *H. 3d.* and his Nobles and Commons sent a Remonstrance to the General Council at *Lions* against the said *non-obstantes*, as a Papal engine and new device to subvert all Canons, Decretals, Priviledges, Exemptions, Grants, Charters, Laws, Councils, Oath, Faith, Truth, Honesty, Justice and Christianity, for sinister ends, slyly trece, and gaining money to the Pope's Exchequer, as *Mat. Paris* speaks in his Hist, *p. 826*,

827; but soon after that H. 3d (imitating those detestable non-*stante's* and *appellatione remota's* in the Papal Bulls) revoked his former Patents and Charters, or the benefit of those Grants, saying, *Nōne Papa facit similiter?* and thence this Historian exclaimed, *Jam civilis Curia exemplo Ecclesiastica coinquinatur, et à sulphureo fonte Romæ rivulus intoxicatur*; Id. Mat. Paris, p. 757. And therefore the English Bill and Act of Rights, as afore recited, providing for the Subjects, excellently declared and enacted that no dispensation by non-obstante of or to any Statute, or to any part thereof, shall be allowed, but that the same shall be held void and of no effect, unless the dispensation be allowed of in such Statute; and that the pretended Power of dispensing with, and suspending of Laws, and the execution of them, by Regal Authority without consent of Parliament, was illegal; and that all Commissions, and Courts of the like nature with the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, were illegal and pernicious.

There is a difference, at least as to the force of the said Clause *appellatione remota*, in Regal and in Papal Commissions for Ecclesiastical Causes; for tho' this Clause in both be prerogative and derogatory to the Canon-Law of Appeals; which says, *Omnis oppressus liberè appellet, & à nullo prohibeatur*, 2 q. 6. c. 3. et *Quoties aliquis appellaverit, audientia sibi non denegetur*, *ibid.* c. 9. (And this Clause doth not respect frivolous or frustratory Appeals, for the Law it self had prohibited such Appeals; *Appellationibus frivolis nec Justitia deferat, nec sua Judice deferendum*, *Sext. de Appell.* c. 5. and *Per appellationem frustratoriam, etiamsi non fuerit inhibita per clausulam appellatione remota, negotium non debet impediri*; *Extra. de app.* c. 53.) yet the Papal Commissioners, being impowred to proceed in Ecclesiastical causes *appellatione remota*, could deny only those Appeals, which were not expressly allowed by the Law; *Per clausulam appellatione remota inhibetur omnis appellatio, quæ à jure non indulgetur expressè*; *Extra. ibid.* And this Prerogative-Clause, put in Regal Commissions Ecclesiastical, requires the Commissioners (notwithstanding any appeal) not only to execute their definitive Sentences (which by the Canons are immediately and

and of course suspended upon the interposition of an Appeal from them) but it is also as the King's special countermand to his Lord Chancellor forbidding him to admit any Appeal, even one of a devolutive effect from those Commissioners; and the Appellant himself is prohibited from prosecuting or making any appeal in this case, altho' all the Canons of the Church should allow it; because no Ecclesiastical Canon is of any force, if it be repugnant to the King's Prerogative, as the English Statute of Appeals 25 H. 8. c. 19. and the Irish Statute 28 H. 8. c. 13. have declared; and therefore the Temporal Judges (in Moor's Reports as afore mention'd) resolved that no Appeal lay from the High Commissioners: for their Commission was grounded upon the King's Prerogative Royal; and those Judges, with the Bishops, Divines and Civilians, in compiling the reformed Ecclesiastical Laws, made this to be one of those Laws concerning Appeals, *Ne recipiatur appellatio, quando à nostra Regia Majestate causa sublegata est, sub conditione, ut inde non appellatur*; Reform. p. 283. And thereupon some Judges gave their Opinions, that only a supplication lay to the person of the King for a Commission of Review from the High Commissioners, tho' their proceedings or sentences were never so grievous, Moor 783. 4. Inst. 328, 341. 2 Brownl. 15. 2. Roll's Abrid. 232. But other Judges, as Dyer and Cook in 4. Inst. 340, resolved that notwithstanding the Clause *appellatione remota in Regal Commission Ecclesiastical*, a just and lawful appeal, being due by Equity, Right and Justice, ought to be received and admitted, 4 Inst. 340. And thus some Canonists, in their flatteries to the Court of Rome, declared, that no Appeal lay from the Pope's Delegates, where the said Prerogative-clause was in their Rescript or Commission; *Doctores tradunt inconcussam concussionem quod per clausulam appellatione remota (quam solus Princeps potest apponere, quia est de reservatis Principi) tum devolutivus quam suspensivus appellationis effectus, atque omnes alii effectus ab appellatione proficiscentes sunt sublati*, Lancellot. De Artem. p. 234, 235. Panorm. Resol. p. 103. n. 13. But other Canonists resolved that the Pope's Will was to be revealed in the Law, and that by it his Prerogative was admeasured, and is so to be construed

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construed that it might not prejudice the right of the Subject, and that he might modify the Law, making some Appeals to have a suspensive effect, and some to have only a devolutive; yet he could not of himself take away the Common Law of the Church in appealing, unless he had so decreed in a general Council, by which all Subjects, having given their consent, were concluded. And the afore-cited Council of Lateran, determining those different opinions, did in the Canons 35, 36, 48, remove, as well the prerogative restraint put on Appeals, as also the licentious use of them; ordaining, That no Appeal should be allowed from interlocutory Sentences, or the pretended grievous acts of any competent Ecclesiastical Judges, Ordinaries or Delegates, except the Appeal did expressly shew a rational cause, or one so probable, that if it may be proved, it must be reputed as lawful; prout Bin. Conc. Vol. 7 part. 2, p. 815, 817. which Canons are inserted in the Body of the Canon Law, Extra. l. 2. tit. 28. c. 59, 60, 61.

This clause *appellatione remota* in Ecclesiastical Commissions is a negative pregnant, strongly implying the allowance of Appeals from those Commissioners; for an Appeal is a general right, where it is not specially restrained in the exercise of Ecclesiastical Jurisdiction; and therefore in the said Council of Lateran, this Decretal was made as a Rule of Law, viz. *Appellationi, nisi in causa appellatione remota commissa, cum debita devotione deferendum est*; Conc. Lateran, part. 10. c. 17. and so the Canonists take and use it as a Law; *Si appellatio non est in Rescripto Principis remota, appellari potest simpliciter & sine causa*; Durand. Spec. l. 2. p. 837. and thus the above named Compilers of the Ecclesiastical Law declare, that if the said clause be omitted in the Ecclesiastical Commission, an Appeal without doubt lies from the Commissioners, as well as from Ordinaries; *A Delegato ad Delegantem appellare debere non ambigitur*; Reform. p. 195. *Potest à Delegato ad Delegantem appellari, ac perit ut ipse causam cognoscat, aut aliter eam cognoscendam demandet*; Id. p. 277. and the authority of those Reformers in this case is of great weight; for they were contemporary with the makers of the said Statutes concerning Appeals and Prerogative; *Contemporanea expositio est fortissima*

in lege, 2 Inst. 11. Therefore seeing the said clause *appellatione remota* was omitted in the said *Lisburn* Commission; doubts the Petitioner's said Appeals ought to be allowed; especially since his Appeals were made from pretended definitive Sentences.

Ecclesiastical Sentences, viz. *Interlocutory* and *Definitive*, as to Appeals, have a considerable difference; for the Appeal made from *Interlocutories* (as the said Council hath before ordained) *must express the grievance*; but an Appeal from *Definitives*, or from those Sentences which have the force of a Definitive, *needs not to specify any cause of grievance*; unless the Law or the Prince had expressly commanded that this Sentence should be executed, notwithstanding any Appeal; *In this case* the Appellant hath the *Presumption* of the Law against him, as if his Appeal was only a *delatory Plea interposed to stop Execution*; but when he alledgeth in his complaint a *just cause*, then the *presumption ceaseth*; and the Judge, who gave the Sentence, must *defer to it*, and the Judge of Appeals must *admit it*; because the Law requires them so to do: and *Mirantia* (a famous Ecclesiastical Judge in a Kingdom where the Chief Governor was Supreme in Ecclesiastical as well as Temporal Causes) says *That this distinction may solve all the doubts in infinite cases*, where Appeals are prohibited from definitives; *Cum appellatio fit prohibita à lege vel ab homine, ut quando committitur causa appellatione remota, appellans habet Juris presumptionem contra se; unde Judex non tenetur ejus appellationi deferre: sed quoniam allegat justam causam, cessat illa juris presumptio, & Judex deferre tenetur; & ista fallentia servire potest ad infinitos casus, qui in Jure reperiuntur, in quibus appellatio prohibetur; Id. Mirant. Spec. p. 354. n. 155.* But in other cases, where Appeals from definitives are not expressly prohibited, The general Rule is, *Appellatio à diffinitiva non habet necesse, quod contineat causas gravaminis in specie; Id. ibid. n. 153.* Appellans à *sententiâ diffinitivâ causam appellationis allegare non tenetur; Socin. Jur. Reg. 28.* And the Expositors, of the appellatory Canons in the Council of *Lateran* afore-cited, declare *That those Canons do not oblige Appellants to shew cause in their Appeals from the definitive Sentences*

tences given by Ordinaries or Delegates; *Idem juris est in omnibus Judicibus Delegatis & Ordinariis, à quibus non potest appellari nisi causa rationabili allegata ante sententiam: sed de appellatione post sententiam nihil statuitur per istam constitutionem; Extra. l. 2. tit. 28. c. 59. gloss. c.* And those Glossators further say, *It is always the practice in the Court of Appeals, when the Appeal is made from grievances before definitive Sentence, that the Judge first examines the grievance; and if he finds the Appeal to be lawful, that is, if it expresseth a reasonable or probable cause, then he decrees that the Appellant had lawfully appealed, and afterwards he proceeds upon the principal cause; but if the Judge finds the Appeal unlawful, he decrees it such; and remits the pretended Appellant to the Judge à quo to be condemned in charges; But if the Appeal be from a definitive Sentence, then the Judge ad quem is bound by Law to admit it, and to take cognizance of the merits of the cause, and to see whether the Sentence was lawful or not; and if it was well and justly given, he confirms it; if badly and unjustly given, he reverseth it; prout Id. ibid. gloss. d.* And this ancient Law and Practice is confirmed by the *Reformatio Leg. Eccles. de App. c. 2, 20, 45.* and by *Clark's Praxis in Curia Eccles. tit. 242, 243.* And since the Petitioner's said Appeals were interposed not only from definitive Sentences of the said *Lisburn-Commissioners*, but these Appeals expressed in them several grievances, errors and iniquities, as neglects of Justice and judiciary order, apparent on the face of those Sentences, *viz. Their suspending and depriving the Petitioner of his Ecclesiastical Benefices for uncertain causes, commissa, permissa sive neglecta, charged on him as the grounds of their said Sentences; and their condemning him to pay the expences of their own pretended meer and noble office, by way of Inquisition as aforesaid;* therefore there is much more reason that the said Appeals may be admitted as of right, and without difficulty, than those Appeals which are made meerly from definitives; and yet such are allowable of course, altho' they do not specify any grievance.

Definitive

Definitive Sentences, given by Delegates upon Appeals in causes of the 2d or 3d instance, are indeed final, as to any further Appeal, according to the *English Statute 28. H. 8. c. 19*; which is declaratory of the ancient Law of the Church; *Terminò appellari non licet, Extra. de app. c. 65*. And the reason of it is, that there may be an end of controversies; for it is the interest of the Subjects that Strifes should not grow immortal. And therefore no Subjects may be allowed to appeal from the Sentence of the Law, *Appellatio, quæ fit contra leges vel canones, non est aliquatenus admittenda, Extra. De app. c. 29. Et est generalis regula in jure, qd. à lege generali appellari non potest, Marant. Spec. p. 375. n. 360*. But an Appeal lies from the sentence of the man, or Judge, if he misconstrued the sentence of the Law, as aforelaid; *Appellatur à declaratoria sententia Judicis, quia est possibile qd. Judex m. de declararet; Id. Marant. p. 364. n. 183. A pœnâ Juris non licet appellare; sed à sententiâ Judicis appellatur quâ pronuntiavit litigantem in pœnam Juris incidisse; Reform. l. g. Eccles. p. 282*.

Null Sentences are appealable, as well as grievous and unjust acts, in Ecclesiastical Causes: for tho' a null sentence hath no substance in the Law, and can never pass into Judgment or in rem Judicatam; and therefore an appeal from it is not needful; *Sententia lata contra leges vel canones non tenet, nec ab ea opus est appellare, Extra. De Sent. c. 1*, yet since a null sentence hath the semblance of a real true sentence, and may be made in a Court of Justice, and by pretended Judges, and hath the presumption of judiciary authority: the party by it grieved may and ought immediately to appeal from it, to stop the actual and mischievous force of it, until it be declared a nullity; not to have it reversed by the Appeal, but to be examined judicially and denounced to be and to have been a null and void act *ab initio*. The Temporal Judges say, that an Appeal may be as well made from a null as from an unjust Sentence; *A nulla vel injusta sententiâ appellari potest; Bracton f. 427. n. 2. Flet. l. 6. c. 45*. And the Canonists declare that the Appellant may lawfully say that the Sentence is unjust and null; for a nullity is the greatest injustice: and they advise the cumulation of appeal

appeal and nullity in the same complaint to the Superior Judge, as a matter of great advantage to the Appellant; for thereby the force of the nullity is suspended by the Appeal as well as the Injustice: *Nullitas deducta insimul cum appellatione ab ipsa appellatione vires acquirens suspendit & devolvit totum negotium ad Judicem ad quem, Vant. de Nullit. p. 82. n. 34. Longe utilius est nullitatem appellationi accumulare, & ita cumulatim proponere, quam simpliciter eandem solam deducere, Ibid. p. 29 & 83. Leges non excludunt potestatem appellandi à sententia nullâ, sed necessitatem duntaxat remittunt, Id. p. 96. n. 117.* And as this is the Law, so it is also the Practice of the Courts of Delegates in Rome, London and Dublin. *Durandus*, called *Speculator* & *Pater Practica*, a Learned and Just Judge in the *Rota*, says *Possum, quibuscunque modis possim, appellationem meam defendere & sententiam impugnare: Dicere sententiam esse nullam & petere nullam pronunciari; & si qua apparet, eam prosegui & cassari petere: Judex appellationis possit pronunciare sententiam esse nullam: Curia servat quod causæ appellationis & nullitatis possunt coram eodem Judice tractari, Id. l. 2. p. 802. n. 28, 29.* And so say the Lords in the *Rota*, *Judex appellationis potest cognoscere de nullitate & in eventu pronunciare appellationem injustam, Antiq. Decis. 109.* And so Pope *Innoc.* the 4th in his *Apparatus mirificus orbe toto celebrandus*, says, *Si appellaretur post sententiam appellans non tantum excipiendo, sed etiam agendo coram iudice ad quem appellavit potest dicere sententiam injustam & nullam; quia quibus cunque modis potest, debet defendere appellationem suam; et à sententia, quæ est nulla, appellare licet; quia gravatus fuit de facto; Et licet sententia lata contra eum sit nulla, potest tamen petere sententiam pronunciari nullam, Innoc. f. 141 n. 2.* and all or most of the Commissions of Appeals, issued out of the High Court of Chancery in England or Ireland, shew, that the Appellants complained, to the King and his Chancery, not only of Erronious proceedings and sentences of the inferior Judges, but also and principally of their Nullities therein; and thereupon the Delegates are commanded to Act and Decree in causa appellationis et in Querela nullitatis hujusmodi cum incidentibus, &c.

The sentence of Excommunication in the Petitioner's case, may require a peculiar consideration. The said Lisburn-Commissioners (on the 28th of March 1694 having by their Sentence suspended him from the Office and Benefice of his Prebend for doubtful matters as aforesaid; and having interdicted him under pain of utter deprivation of the said Prebend, from performing any duty or receiving any profit in or out of the same; from which sentence the Petitioner in their presence immediately *viva voce et apud acta* protested) did on the next day, viz. 29th of March (during his actual appeal from them, and being out of the said Dioceses and their pretended Jurisdiction there, and in his speeding to the King's Courts in Dublin for protection, relief and forming his said Appeal) decree that he ought to be Excommunicated, and thereupon instantly they gave their sentence of Excommunication against him, without any previous legal citation commanding him to hear the said Sentence, and without charging him with any true contumacy; but upon pretence that he had not exhibited before them his Title to the said Prebend, nor shewn to them a sufficient cause to the contrary. A sufficient cause is that which may suffice for want of a true and full cause; but the said Commissioners themselves by their own shewing in their Articles under their hands against the Petitioner declared that he had quietly possessed and enjoy'd the said Prebend for the space of above 20 years then last past by vertue of a Title, Collation or Institution to the same; and by their said sentence of Suspension and Interdict they implicitly declared that he was legally intituled to the said Prebend: They had perused his Faculty or Title, granted to him under the Great Seal, which they had in their custody, and by which it appeared to them, that he retained his said Prebend by a Canonical Title, and was to hold it so during his life: They likewise perused and allowed an Episcopal Instrument under the Hand and Seal of the Bishop of the Dioceses of Down and Connor aforesaid, dated in the year 1667, certifying that the Petitioner was then intituled and instituted to the said Prebend; and the Petitioner made and subscribed before the said Commissioners in Court an Affidavit, declaring, that he was collated, instituted and instal-

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led in the said Prebend in the said year 1667, and that he had then performed, as he believed, all the requisites of Law to make him a rightful and compleat Prebendary of the said Prebend; and that he had often exhibited his Title to the said Prebend in several Metropolitcal and Episcopal Visitations of the said Dioceses; and that he had produced the same at several Tryals in the King's Temporal Courts concerning some rights and members of the said Prebend; and that this Title was never disallowed in any Court, but was of late lost or miscarried, so that he could not then find it: but the entries of it were extant in the Registries of those Courts and Visitations; and a significavit of the said Institution remains amongst the Records of this Kingdom in the Court of Exchequer, Dublin, upon the Petitioner's compounding with the King for the first Fruits of the said Prebend. The said Commissioners might have been satisfied in this matter by the known Rule *De Triennali Possessione*. The Canon, *De Pacificis Possessionibus*, made by the General Council of Basil, Sess. 21, is, *Quicumque non violentus, sed habens coloratum titulum, pacifice et sine lite Prælaturam, Dignitatem, Beneficium vel Officium Triennio proximo hæcenus possedit, vel in futurum possederit, non possit postea à quoquam molestari*; Bin. Conc. Tom. 8 p. 61. This Rule and Canon has been expounded by the Lords of the Rota and other Ecclesiastical Judges, shewing That a Clergy-man (having the quiet possession of an Ecclesiastical Benefice, and being the reputed Incumbent thereof for ten or three years) may not be compelled by his Diocesan or any other Visitor or Inquisitor ex officio to exhibit his Title to that Benefice; because the Law presumes, in favour of possession, that this Incumbent did enjoy his Church under a legal Title; and that he had performed all things which the Law required of him, to have and hold that living; and likewise it presumes that the Bishop and Archbishop, in their Annual and Triennial Visiting that Church and Incumbent, and receiving from him proxy-money, had seen and allowed his Title; and let those, who deny, prove the negative. It is a case in point decided in the Court of Delegates in Rome; A. D. 1519. *Domini de Rota in causa inter partes decreverunt Quod Regula Cancel. De trien. poss. etiam*

etiam locum haberet in eo, qui decennio possederit, & nullum titulum producebat; ex eo quod jus præsumit titulum ex sola possessione antiqua; nam si quis rector beneficium tanto tempore possedit, in eo jus habet, & præsumitur titulus; & sic dicunt Innoc. Hostiens. et Dominicus; et ratio est, quia cum Episcopi visitando inquirent de titulo, non est præsumendum quod ipsemet, quoad curata, permisissent tali cursu temporis retineri Ecclesiam absque canonico titulo: Titulus decennalis vel antiquior præsumptus defendit etiam adversus superiorem Inquirentem: prælatus ex quo toleravit diu in possessione subditum, non potest eum compellere ad ostendendum titulum beneficii, tamen potest in se suscipere onus probandi defectum tituli: as may be read in Navar (who is intituled *Juris consultorum facile princeps*) in his *Consil. and Respons.* Tom. 1. p. 84. and in *Barbos. Collect.* in 3. *Decretal.* p. 60. n. 9. Possessio continua facit præsumi pro jure et titulo possidentis; *Lynw.* p. 196. *glos. o.* Quando proceditur contra beneficiatum ad partis instantiam, tunc sufficit possessio quousque; in contrarium probetur titulus vitiosus; sed ubi Ex officio contra eum proceditur, et beneficiatus diu sic steterit sciente Prælato, tunc sufficit titulus talis præsumptus ex patientia quousque asserens contrarium probet; *Othon.* p. 39. in fin. *glos. e.* Si Clericus per triennium possederit beneficium, et perdidit institutionem, stabitur Juramento suo; sed si steterit per decem annos, nulla probatio requiritur; *Rebuff.* p. 1158. Beneficium pacifice possidens titulum probare non tenetur; maxime si possessio esset antiqua: si dicat se sua instrumenta perdidisse, compelli non potest, ut titulum ostendat: Clericus qui diu fuit in possessione, sciente et patiente Diocesano, præsumitur canonicè institutus; ratio est, quia sollemnitas extrinseca propter diuturnitatem temporis præsumitur: Episcopus Visitans, quia approbavit expressè titulum beneficii possidentis, sc. procuracionem exigendo, non potest amplius ipsum vexare, nec cogere ad fidem faciendam de suo titulo; sic communiter Doctores tradidere; prout *Mascard.* Vol. 3. p. 471. n. 1, 2, 3, 4, 5, & 21. Titulus beneficalis ex decennali possessione præsumitur de jure communi: et satis est pro *Reg. Canc. de Trienn. poss.* quæ Regula tuetur possessorem; *Id. Masc.* p. 46. n. 10, 53. This is the ancient common Law of the Church, Titulum suæ possessionis quis dicere non tenetur; *Decretum* 16. q. 3. c. 6. f. *Extra.* l. 2. tit. 19.

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c. 19. k. Socin. Jur. Reg. 425. n. 3. Sext. in Jur. Reg. 1. glos. 1. in fin. & l. 1. tit. 16. c. 3. in casu & glos. m. And this is also the Rule of the Civil-Law; *Cogi possessorem ab eo, qui expedit, titulum suae possessionis dicere, incivile est*; Cod. l. 3. tit. 31. c. 11. And this is one of the Ecclesiastical Laws of the English Reformers aforesaid; *Possessori non incumbit onus probandi res possessas ad se pertinere*; Reform. p. 219. And in the like cases the Temporal Judges have so resolved in 1 Siderf. 220. Glayton's Rep. 83. Rolls 1. Rep. 83. Kebl. 3. Rep. 152. Watson's Clergy-man's Law, p. 120, 121. By all which it may sufficiently appear, that the said Lisburn-Commissioners had no just, reasonable or sufficient cause to compell the Petitioner to exhibit his said Title to them; and for his not shewing it, to excommunicate him: and the Law expressly allows the Appeal in this case; *In non exhibendo contumax appellans auditur*; Pand. l. 4. tit. 1. c. 28. Socin. Jur. Reg. 104. n. 3. Durand. Spec. l. 2. p. 450. n. 3. for the Petitioner's Appeal was from the said Commissioners Sentence, as it arose from their own mistake of the Law concerning the exhibition of Titles; (supposing that they had Jurisdiction of the matter, and had proceeded against him orderly) and therefore this Appeal was made to suspend that erroneous opinion, lest other Visitors hereafter might vex him upon that or the like account, which would be the execution or consequence of the said Sentence.

An Appeal lies from the Sentence or Decree of Excommunication given by Ecclesiastical Judges, whether they be Ordinaries or Delegates: altho' some Popes and Decretists in their subtil distinctions say, that such Appeal hath only a devolutive effect, and cannot suspend that Sentence: and that the party, tho' he be unjustly excommunicated, must first be absolved *ad cautelam* before his Appeal can be admitted and heard; that he may merit by obedience and patience; and that Ecclesiastical Discipline and Censures may become venerable, and the Arms of the Militant Church may be feared, and that the Bishop's Sword, *Mucro Episcopalis*, and the power of the Keys may be more revered; and that this Sentence carries with it immediate execution invisibly: as Pope Innoc. the 3d
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afore-mentioned wrote in his Decretal to the Bishop of Ely in *Extra. De app. c. 53. Sect. 2. & glos. d.* And some Popish Church-Lawyers further say in this matter, *Appellari non potest ab excommunicatione, quia Christus ligat, à cuius sententiâ non potest appellari, 11. q. 3. c. 31. glos. 1.* But the ancient Canons of the Church and common reason say, That there is no difference in this case between the sentence of Excommunication and other Sentences; for a just and lawful Appeal lies alike from them; and this is the opinion of many learned Canonists; *Extra. l. 2. tit. 28. c. 53. glos. d.* The Great Speculator afore-named says, *Appellationem à sententiâ Excommunicationis tenere sine Injusta causa expressione, sicut in appellatione à sententiâ definitiva contingit; Durand. l. 2. p. 846. n. 2.* And the said Innocent says, That if the Appellant proposeth before the Judge *ad quem* that he was Excommunicated after his Appeal, or that the sentence of Excommunication expressly contained an intolerable error, his Appeal ought to be admitted, even before any cautionary absolution; for if he had done no fault, he needed not to ask pardon; *ubi quis proponat se post appellationem legitimam interpositam excommunicatione notatum, vel in forma excommunicationis intolerabilem errorem fuisse patenter expressum, in his casibus ad probationem eorum, etiamsi absolutionem non petat, debet admitti;* which is made part of the Canon-Law, *Extra. De Sent. Excom. c. 40. Sect. 3.* And Innoc. the 4th in his said celebrated *Apparatus* Expounding this part of the Canon-Law, says, That an Excommunicated person may prosecute his Appeal as well as if he had not been Excommunicated; and if he may not obtain a Commission of Delegates upon his Appeal, and thereupon prosecute it from a sentence of Excommunication, to what purpose should the Law allow him to appeal; as it does, says he, from that Sentence in the like and also in different causes: *Audiendus est excommunicatus in prosecutione appellationis, sicut non excommunicatus; Excommunicatus non solum potest prosegui appellationem causa pro quâ excommunicatus est, sed etiam penitus diversam: Hoc speciale est in appellatione, ut excommunicatus ipsam proseguens admittatur; Id. Innoc. f. 122, 124, 138.* And the Canon-Law,

Law, in allowing the excommunicate to appeal, says *Cum excommunicato quando in causa absolutionis existit, non sit iusta deneganda sententia, nec interdici debet eidem appellationis remedium, si contra Iustitiam condemnatur; Extra. l. 2. tit. 25. c. 5. Cuiuslibet excommunicato defensionis auxilium competere dignoscitur, Idem Ibid. c. 10. Prætextu excommunicationis opposita à prosecutione appellationis non debeat quis excludi; cum omnis legitima defensio excommunicato in Iudicio reservatur, Ibid. c. 11. Valet Rescriptum impetratum ab excommunicato super prosecutione appellationis; quia nihil Excommunicato appellare prodesset, si non potest appellationem suam prosequi, & super ea Literas impetrare, Ibid. c. 14.* In that Primitive and Great Council at Sardis A. D. 351 the 27th Canon ordains, That any Presbyter, being excommunicated by his Bishop, ought to appeal *ad Episcopos finitimos*, to a Synod of neighbouring Bishops, as to a Court of Delegates, who were to examine and determine the matter; and those Superior Judges were bound, upon the Party's Petition, to admit the Appeal; *non oportet ei negari audientiam roganti*: and this Canon is recited in the first and also in the second part of the Body of the Canon Law, with this remark in both places; *Secundum antiquos Canones quilibet Excommunicatus audiebatur, qui volebat ante absolutionem probare se injuste excommunicatum, Decretum 11. q. 3. c. 4. glos. g. & Extra. l. 5. tit. 39. c. 40. Sect. glos. f.* The 22th Canon of the Council assembled at *Mevenum* (whereof St. Augustine was President) decreed the like method of appealing; but inhibited any appeal to be made to Bishops beyond Sea; 2 q. 6. c. 35. & 11. q. 3. c. 34. And tho' it was said in *Moor's Reports*, case 1089, That the Appeal might suspend the Sentence, but it did not suspend the Excommunication given by an Ecclesiastical Judge; as if, according to the old Popish Notion afore-intimated, Excommunication carried with it invisible execution: whereas the Expositors of the Canon Law in this Point say, That this is no reason, why an Appeal may not lie from an Excommunication; for an appeal lies from an Ecclesiastical Execution, if it be excessive; and likewise from an Absolution, granted to an excommunicated person without satisfaction: in these cases,

cases, as in other sentences of deprivation and condemnation, the Judges of Appeal do confirm or reverse those Excommunications; 11. q. 3. c. 31. glos. l. & Extra. l. 2. tit. 28. c. 53. glos. d. And the Modern Civilians and Canonists do declare that the Excommunication decreed by a Judge is suspended by a subsequent Appeal, or at least the denunciation of Excommunication is suspended by it: *Excommunicatio suspenditur per appellationem sequentem, nec abstat quod dicant quidam Decretista sententiam Excommunicationis trahere secum executionem*; Cod. l. 7. tit. 48. c. 4. glos. q. Navar. Consil. tom. 1. p. 140. & tom. 2. p. 245. Panorm. Resol. p. 346. n. 16. Zerola Prax. Episc. part. 2. p. 107. Piafec. Prax. p. 329. Garcias De Benefic. part. 7. p. 110, 111. Lancellot. De Attent. p. 197. n. 12, & p. 223. n. 25. And the afore-mention'd Reformatio Leg. Eccles. De App. c. 58 & 59 prepared these Rules to be made Laws for the Church of England and Ireland, viz. *Si Appellatio fuerit interposita, priusquam excommunicatio sit denunciata, denunciationem ejus impedit: Non tenet Excommunicatio lata post appellationem judicalem vel extrajudicalem: Timens injuste excommunicari appellet extra judicium, & suspendit Jurisdictionem Judicis: sed post gravamen inflictum necesse est appellare.* And since the Reformation of the old Popish Laws, It has been the daily practice in Ecclesiastical Courts to appeal from unjust Excommunications; and the superior Judge of the Appeal, upon proof of the injustice of the Excommunication, doth condemn the party (who procured the Excommunication) with full costs of the whole Appeal and also of the Excommunication; and then he takes cognisance of the principal cause; *Excommunicatus potest ab injusta excommunicatione ad Judicem superiorem appellare; & adversa parti, qua hanc obtinuit excommunicationem, est condemnanda in expensis totius appellationis & injusta Excommunicationis, & causa principalis est tractanda coram Judice appellationis*, Clarkj. Prax. tit. 304. And the Temporal Judges have declared that an Appeal stops the force of an Excommunication, sentenced by an Ecclesiastical Judge, so that a Clergy-man, being excommunicated, may upon his appeal immediately act, as he used to minister before, in his office; 2 Roll's Abr. 223. Moor.

467. *Fleta*. l. 6. c. 45. *Fitzh. NB.* n. 64. *F.* 2. *H.* 6. f. 25. c. And therefore much more he may enjoy his Benefice, during his Appeal, notwithstanding the said Excommunication.

There is indeed a reasonable distinction to be made in Sentences of Excommunication and in appealing from them: Some Sentences of Excommunication are awarded by the Law for great crimes; and some given by Ecclesiastical Judges for contempt to their Court or orders; and accordingly Appeals are made *à Canone* or *ab homine*. By the English Statutes of *Articuli Cleri & Circumspectè Agatis* enacted by K. *Ed.* 2d. for laying violent hands on a Clergy-man; and by the Statute 5 *Ed.* 6. c. 4. for striking in the Church or Church-yard; the parties were excommunicated *ipso facto*, or which is all one, *Ipso jure*: and by the Statute 9 *Ed.* 2. c. 12. a Clerk may be excommunicated for contumacy; and by the Statute 2 *Ed.* 6. c. 13. a man may be excommunicated for disobeying the Sentence of an Ecclesiastical Judge in cause of Tithes. The *Sententia excommunicationis lata* must be judicially declared in Court; and the party must be legally cited thither to hear that declaratory Sentence; and to shew a rational cause, if any he can, why the Sentence should not be so declared; and afterwards denounced in his Church: so says *Lynw.* p. 298. *glos. e.* It was said by the Justices 41. *Eliz.* B. R. 1. *Cro.* in *Kolley's Case*, and in *Moor Rep.* c. 1127. *That in some cases the party might have good cause to beat the Clerk*; possibly in the case of *se defendendo*: but unless the beating or striking be notorious, it must be proved; and if the fact be denied, and not proved, the Judges may declare the Law amiss; in which case an Appeal lies, as afore hath been proved. And this Appeal perhaps may have only a *devolutive effect*; because the presumption of the Law and for the Judges lies against it. And therefore the General Council of *Basil* in their 20th Session declares *That no Christian ought to avoid conversing with an excommunicated person (who is not yet denounced) unless he had notoriously incurred the Sentence of Excommunication pronounced by the Law; Nisi constiterit aliquem ita notoriè excommunicationis sententiam incidisse, quod nulla possit tergiversatione celari.* Bin.

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Conc. Tom. 8. p. 60. *In duobus casibus tenemur evitare excommunicatos; Primo quando quis est publicus percussor Clerici: Secundò, quando sit publicè denunciatus; Et hæc est communis opinio modernorum; unde quis sciens aliquem esse excommunicatum, nisi in his duobus casibus, non tenetur eum etiam hereticum evitare; Zerol. Prax. part. 1. p. 314.* But where those Judges take cognizance of an Ordinary Ecclesiastical Cause (*viz.* the non-exhibition of a Title, non-payment of proxy-mony or detention Tithes, as mention'd in the said Statute 2 Ed. 6. c. 13.) and they excommunicate the party for not obeying their decree to pay the Tithes, which possibly he had paid, or which he was not bound to pay, or the debt was not legally demanded or proved on him; in this case, *this party being grieved may have a suspensive Appeal, as well from the Sentence of Excommunication, which is the accessary; as from the principal, or definitive decree made against him for non payment of the Tithes and costs; notwithstanding the Decretal of Innocent the 3d to Bishops, Commanding them to force Parishioners by the censures of the Church to pay to their Incumbents all the Tithes of their holdings app. remota; Extra. l. 3. tit. 30. c. 20.* And thus tho' the English Statute of 32 H. 8. c. 7. (which is repeated and enacted here by the Statute 33 H. 8. c. 12.) allowed the ungodly detainers of Tithes, in a decimal summary cause, to appeal from the order and definitive Sentence of the Ordinary or Commissary, condemning them in the debt and charges; and tho' that Statute likewise requires the same Judge, notwithstanding the Appeal, to compell the Appellants by Sentence of Excommunication to pay to the other party the reasonable costs of his Suit; yet the Appellant (if he finds himself aggrieved by an excessive taxation of those costs, and also by that sentence of Excommunication) may appeal from both, notwithstanding the said Statute; *Pars condemnata potest non solum ab hujusmodi excessiva taxatione, verum etiam a dicta injusta excommunicatione appellare, non obstante dicto statuto;* as the Ecclesiastical Judges with the Secular Judges of the Kingdom, upon their consultation in the Reign of Q. Eliz. gave their resolution in this case: as may be seen in *Clark's Praxis. tit. 273.* and *Fitz. Herber t,*

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Herbert, that most reverend Judge, in his *Natura Brevium*. n. 64 & 65. (shewing the Common-Law in the like cases) says, That if a man be sued in the Spiritual Court, or the Bishop sues or cites him *Ex officio*, and excommunicates him, and certifies the same into Chancery; and thereupon a Signif. is awarded unto the Sheriff to apprehend him, and afterwards the Official by Letters doth certify into Chancery, that the excommunicated man had appealed from that Sentence unto the Superior Court; upon this Certificate the Court of Chancery will issue forth a *Superfedeas* directed to the Sheriff, reciting that the man had appealed, and commanding the Sheriff not to apprehend him *pendente appellationis negotio*; and that the Appellant, proving in Chancery the instruments of his Appeal, and also his diligence in prosecuting it, may have a special *Scire Facias*, warning the party at whose Suit the Appellant was excommunicated; and also the Bishop, who excommunicated him and got the Signif. against him, to appear in Chancery to shew cause, why the said Appellant should not be apprehended; or if he was in custody, why he may not be delivered *pendente appellatione*; seeing therefore the Court of Chancery will by the Common Law take so much notice of an Ecclesiastical Appeal from a sentence of Excommunication as by *Superfedeas* and *Scire Facias* to stop the force of that Sentence, the Petitioner's said Appeal may be admitted in *Officina Justitia*, in that part of the High Court of Chancery from whence Commissions of Delegates upon Appeals do issue.

A Sentence of Excommunication, decreed by a Judge, or (as the Canonists speak) *ab homine*, can be given only for a contumacy or contempt to his order or judiciary opinion; and how often and grievously may men be mistaken in their opinions? and how many pretended contempts are no contempts? and how many commands are not to be obeyed? The great Council held A. D. 1264 by Othobon in Engl. (where the Church of Ireland had their Representatives, *Lynn. p. 10. gloss. m.*) ordained that the Subjects should not obey those Visitors, who demand what the Law had not allowed them; and that if any Sentence of Excommunication, Suspension or Interdict was given against the Subjects upon that occasion, it was *ipso jure* void; *Epi.*

Episcopi & alii prelati, cum visitant, gravare subditos non presumant, ultra quantitatem & numerum determinatum, nè visitantes magis videantur lucris pecuniariis inhiare quam Ecclesiarum velle conservare statum, vel salutem querere animarum; Quod si contra facere attentaverint, subditi eis non pareant in hac parte: latas etiam huiusmodi occasione Excommunicationum, suspensionum & interdicti sententias ipso jure decrevimus esse nullas: Othob. Constitut. tit. 18. p. 114. And the gloss on the place says, *Utinam Prelati nostri temporis hanc salutem haberent in intentione!* And further notes, *subditus licite resistat superiori in suo officio erranti*, Ibid. gloss. b. g. And thus the Provincial Constitution of Cant. (when the Doctrine of Passive Obedience and Non-Resistance was in high vogue) decreed that Rectors and Vicars were not bound to obey Bishops, and their Commissaries, when they directed primary Citations to them in causes of correction; *Si huiusmodi citationes primariae Rectoribus, Vicariis aut Presbyteris demandentur, ipsis super his parere minime teneantur; sed citationes ipsae primariae factae per eos, ac exinde subsequuta censura vel processus sint ipso jure irriti & inanes*; Lynw. p. 91. Whereupon Lynwood (who was then Chancellor to the Archbishop of Cant. and Privy Seal to K. H. 5th A. D. 1422.) in his gloss. q. says, *Habes hic unum casum in quo subditus non tenetur obedire mandatis sui superioris: alium casum habes, si mandatum vergat in periculum animae*; the Bishop's Injunction is to be disobey'd when it endangers the Soul: as for example, If the said Liffburn-Commissioners should command the Petitioner to make Oath that he had used his utmost endeavors so to find out his Title to his Prebend, as to have it ready to produce it before them, whilst he knew that the Oath would be false, because he knew that the said Title was lost from him long before these Commissioners were appointed (therefore he could not, and did not use any endeavors to find it so as to produce it before them) It would have been unlawful in them to impose that Oath, and damnable in him to take it. The 33th of the 39 Articles of Religion says, *That a person is excommunicated who is rightly cut off from the unity of the Church*; The 40th Canon of the Church of Ireland saith, *that even for notorious*

notorious contumacy, or notable crimes the Excommunication must be lawful: and the *Reformatio Leg. Eccl. De Excom. c. 3.* says, *Non debet Excommunicatio minutis in delictis versari, sed ad horribilium criminum atrocitatem adm. vendā est: Excommunicationis acerbitas nunquam exprimi debet, nisi cum homines in sceleribus obduruerunt.* The 56th Canon *Ex Conc. Meldens.* *Nemo Episcoporum quemlibet sine certā & manifestā peccati causa communione privet Ecclesiastica, nec nisi pro mortali debet imponi crimine, et illi qui aliter non potuerit corrigi, 11. q. 3. c. 41. Nullus Sacerdotum quenquam recte fidei hominem pro parvis et levibus causis a communione suspendat, præter eas culpas, pro quibus antiqui Patres arceri ab Ecclesia jusserunt committentes, Ex Conc. Wormens. c. 13. 11. q. 3. c. 42.* To cut a man off from the Communion of the Church for a *trifling cause*, is to do as the man did in the *Apologue*, who espying a Fly on his Neighbour's Forehead, went and put it off with a Hatcher, and thereby struck out his brains; as the most ingenious, learned and conscientious Casuist, Dr. Taylor, speaks in his *Cases*, p. 616. And he likewise saith, It is *honourable* to the Church that such an excommunicating Prelate be resisted to his face; *Id. p. 614.* And the Temporal Judges say, such *fulminations* made against the Laws of the Realm are *bruta fulmina, minæ inermes, & idola concessionum, Hab. Rep. 156.* they are unlawful and void acts, and a Prohibition lies in the case; that is, the proceedings and sentences of Ecclesiastical Judges are as the *intermedlings* of private men, where the *cause* or *power* of their Excommunicating is wanting; *Dr. and Student. D. 2. c. 33. & Lath. Rep. 174.* And even the High Commissioners in their proceedings to Excommunication must observe *judiciary order* as *strictly* as any Ordinary, *Cro. Eliz. c. 742. Hetl. 132. March. Rep. 40. 2 Brownl. 6, 18.* These Commissioners might certify their Sentences of Excommunication to Queen Eliz. in her High Court of Chancery for a Writ *De Excom. Cap.* as the Judges said in *4 Inst. 327. Dyer 371. 2. Bulstr. 182.* Therefore the Subjects, being grieved by their unjust Sentences of Excommunication, might certainly appeal from those Sentences to the Queen in her said Court of Chancery for a Commission of Delegates

(where the clause *app. remota* was omitted in their Commission) and doubtless there a Commission of Appeal would have been granted as a *common right and due by justice*; for in the afore-mentioned *Great Office of Justice* there should be no respect of persons; *In judiciis non est acceptatio personarum*, *Jur. Reg.* 12. There justice is to go uprightly with a *currat Lex*, admitting the appeal of the Excommunicates against the Commissioners as readily as the Certificate of the Commissioners against the Excommunicates.

This matter of Excommunication is of great moment, not only to the Petitioner, but also to the Excommunicators; supposing the said *Lisburn-Commissioners* by vertue of their Commission had the *spiritual power of the Keys in binding and loosing*; tho' perhaps this be against the opinion of some Judges, *Hob.* 148 and 3. *Bulstr.* 74. and the *Reform. Leg. Eccles. de Excom.* c. 1, 2. and the English Divines quoted by Bishop *Stillingfl.* in his Discourse on the High Commission p. 13. and Archbishop *Laud* in his Hist. p. 309. and the 58th of the Articles of Religion agreed upon by the Church of Ireland in Convocation *A. D.* 1615. The Sentence of Excommunication is the greatest punishment which the Church can inflict on the greatest Criminal, and therefore not to be inflicted for a small or no fault, as the Temporal Judges say; An Excommunication is *Traditio Diabolica*; and being so great a punishment it ought not to be imposed upon small offenders; *Poph. Rep.* in *Brabin's Case*. And thus the Canon-Law declares; *Excommunicatio mucro Episcopi dicitur, & spectat tantum ad officium Episcopale; & est pena qua in Ecclesia nulla major est; & non debet infligi pro levibus criminibus; 25. q. 3. c. 17. Episcopi, qui sacerdotali moderatione postposita, Innocentes aut minimis causis culpabiles excommunicatione presumpserint, a vicinis Episcopis ejus Provincia literis moneantur; & si parere noluerint, communio illis usq; ad tempus Synodi a reliquis Episcopis denegetur; Canc. 3. Conc. Agathens. 11. q. 3. c. 8.* The Canon-Law likewise declares that the Sentence of Excommunication given by an Ecclesiastical Judge must have these three requisites, otherwise the Sentence is unjust, and the Judge is punishable; *viz.* It must proceed

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out of a good intention, for a just cause and by due order of Law. The General Council of Lateran afore-mentioned in the 47th Canon ordained That no man, Ordinary or Delegate, should presume to excommunicate any person without a previous competent admonition; nor go to excommunicate him without a manifest and rational cause; *Sacro approbante Concilio prohibemus ne quis in aliquem excommunicationis sententiam, nisi competentis admonitione premissa, promulgare presumat; Caveat etiam diligenter, ne ad excommunicationem cujusquam absque manifesta & rationabili causa procedat, Extra. De Sent. Excom. c. 48.* And the Expositors of that Canon say, *Sententia Excommunicationis tribus modis dicitur injusta, sc. Ex causa, Ex animo, et Ex ordine; Ibid. gloss. e. Item, Ordo et causa in hac Excommunicationis sententia servanda sunt, Ibid. gloss. b.* And the Decretal enjoyneth all Bishops to treat their Clergy as their Sons or Brethren, and not to excommunicate any of them without the observation of judiciary order; *Cum Presbyteros, quasi filios & fratres, benigna ac fraternam debeatis charitate fovere, Mandamus quatenus in eos exactiones indebitas exercere nullatenus presumatis; nec de cetero irrationabiliter gravetis, vel inhoneste tractetis eosdem; aut sine iudicio Capituli suspendere; nec aliquem excommunicare sine ordine iudiciario presumatis: Extra. l. 5. tit. 31. c. 1.* And the said Council in the Canon afore said decreed That the Excommunicator, tho' his sentence was just, if he proceeded without the order prescribed by the Law, he was ipso facto himself Excommunicated, or suspended from entering into the Church for a month: but if the Sentence of Excommunication appeared to be unjust, he is to be condemned in costs and damages to the party excommunicated; and he is further to be punished by the Superior Judge; *Cum non levis sit culpa tantam infligere penam infanti, Extra. l. 5. tit. 39. c. 48.* And the gloss on the place shews, how many punishments the Law had provided against the unjust Excommunicator, and what redress for the Excommunicate; first the Excommunicator is suspended and condemned in costs and damages as aforesaid; then he is liable to an action of wrong, *tenetur actione injuriarum*, he is likewise punishable for committing Sacrilege; And this is not only the laying

laying of the Glossor, but the express Rule of the Canon Law; *Dum indiscretè hoc agitur, Sacrilegii facinus incurrunt; et dum precipites quasi ad emendandum ruunt, ipsi quoque multa magis deterius cadunt, 24. q. 3. c. 5.* And the Canonists in their expounding the Ecclesiastical Statutes, as *Marian. Socin.* in his Famous Comment *De Sent. Excom.* (which was approv'd by the highest Authority) resolved that the unjust Excommunicator incurr'd the penalty of Sacrilege; and shew'd the reason, *viz.* because the Judge by his unjust Excommunication doth violate the sacred body of the Church, from which body he plucks away a member of it, and thereby he also robs God; *Qui injustè excommunicat, tenetur pœna sacrilegii; quia violat sacrum, id est, corpus Ecclesia, à qua evellit membrum ipsius injustè, et contra Deum; Socin. fol. 289. n. 267, 268.* A Christian by his Baptism is become a member of Christ; but the unjust Excommunicating Judge by his sentence of Excommunication does, as much as he can, cut this Christian off from the unity of the Church, and makes him a member of Sathan, as the Canon Law speaks; *Excommunicatus est membrum Diaboli, Lym. p. 262. glos. 1. & 11. q. 3. c. 31, 32.* The man that is to be excommunicated (as the Articles of Religion say) must be cut off rightly, *riè et justè*; in a due solemn manner and for a just and great cause, such a cause as deserves Excommunication; and this cause must be expressed in the sentence of Excommunication; otherwise the Decree is a fulmination, and a curse causeless, and *ipso jure* falls on the Excommunicator; *Injustè aliquem anathematizans sibi non alijs nocet, 11. q. 3. c. 68.* The Council held at *Lions* made a decree (part of the Canon Law in *Sext. l. 5. tit. 11. c. 1.*) declaring that Excommunication, given by an Ecclesiastical Judge, is to be as the correction of a Ghostly Father, and as the medicine of a spiritual Physician for the party's health and not his destruction; *Cum medicinalis sit Excommunicatio, non mortalis; disciplinans, non eradicans; causè provideat Judex Ecclesiasticus ut in ea ferenda ostendat se prosequi quod corrigentis fuerit & medentis; Quisquis igitur excommunicat, excommunicationem in scriptis proferat, & causam excommunicationis expresse conscribat propter quam excommunicatio profertur:*

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Si quis autem Judicium hujusmodi constitutionis temerarius extiterit violator, per mensem unum ab ingressu Ecclesiae & divinis officiis noverit se suspensum; Caveant à Ecclesiarum Prælati & Judices universi ne prædictam pœnam suspensionis incurrant; quum si contingerit eos sic suspensos divina officia exequi, irregularitatem non effugient juxta canonicas sanctiones, super qua non nisi per summum Pontificem poterit dispensari: and this Council further decreed, That the superior Judge, upon recourse made to him, shall without difficulty reverse that uncanonical Sentence of Excommunication, and he shall likewise condemn the Excommunicator to the party excommunicated *ad expensas et omne interesse, et alias puniat animadversione condigna; Ut pœna docente discant Judices quàm grave sit excommunicationum sententias sine maturitate debita fulminare.* And the Law likewise requires that the Excommunicating Judge should have an honest mind, when he gives that Sentence; because the force of it is taken from his intention; *Excommunicatio ab excommunicationis intentione vires sumit, Sum. Sylvestr. f. 252. n. 14.* And that this Sentence of Excommunication, altho' it be decreed according to the strict form of the Ecclesiastical Law, and also upon a sufficient ground, yet it is unjust and ought to be revoked, if the Excommunicator did pronounce it out of a pique or on some by-end, and not out of a true zeal and love of Justice; *prout Id. Ibid. & 119. 3. c. 64.* There is a late example of this in *Barcelona A. D. 1695*; where the Papal Inquisitor excommunicated several persons; and they would not be absolved, but insisted, that the Excommunication should be declared void in it self as inflicted without sufficient ground; and his Catholick Majesty banished the Inquisitor for his unjust Sentence; *prout Gazette, n. 3159. published by Authority:* Suppose such Judges by a former Sentence had suspended an ancient Prebendary from the office and Benefice of his Prebend, without any just or certain cause, and had interdicted him under pain of utter deprivation of this Prebend from performing any office (although the souls of his Parishioners might call for it) and from receiving any profit out of the Benefice (although his own bodily

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needs might crave it) and then these Judges should thunder out a Sentence of Excommunication against the said Prebendary and aged Priest of the Church for not shewing his Title to the said Prebend, without any true contumacy in him, and without any canonical monition made to him, and during his absence and actual Appeal from the said Judges and their former Sentence, certainly the Superior Judge upon his examination of this Sentence of Excommunication will declare it unjust, as given *ex malo animo*; for what good end could the said Excommunicating Judges have in separating the Clergyman (who is one of Christ's lot) from Christ's Body, and from the communion of Christians, from the means of Grace and hopes of Salvation for not exhibiting that Title or shew of a thing, when these Judges had before taken away the substance of it? Their zeal may seem to be rather against the person than the fault; for they had sufficiently punished the presumptive contumacy by bereaving the man of his whole livelihood. And in the Petitioner's Case the Excommunicators, by their Sentence of suspending him from his Prebend as aforesaid, shewed a demonstration or gave a vehement presumption that he had a Title to it, according to the Rule, *Suspensio presuppōnit habitum*; and the Affidavit and other evidences shewed by him before them, did free or at least sufficiently excuse him from any true or real contempt to them. The Irish 84th Canon doth not make the Exhibition of Titles before Ecclesiastical Visitors to be necessary; but says, It is convenient that every Parson, Vicar, &c. should shew his Letter of Orders, Institution, &c. at the Archbishop's or Bishop's first Visitation; or at the next Visitation after the Parson's Admission; in which case he satisfied the intent of the Canon, if he had once exhibited his Title to any former Visitor; and this Canon by the Rule of the Law doth not require Cathedral Prebendaries to exhibit their Titles to any Visitors, *Extra. l. 1. tit. 3. c. 15.*

It was very expedient and necessary for the Petitioner in his case to appeal from the Sentence of Excommunication *infra decendium*. Those Canonists (who say that such an Appeal has only a devolutive effect) advise the Excommunicated party to inter-

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interpose his Appeal within the Term of appealing: for otherwise he will lose many great advantages: This Appeal doth suspend the denunciation, which is the execution of that Sentence; and abdicates the Jurisdiction of that Judge; and likewise stops his Certificate, and also the Writ *De Excom. Cap.* as aforementioned, and therefore the Reformed Ecclesiastical Law in this case says, That the party, after he is grieved by the Sentence of Excommunication, must appeal from it. Reform. p. 298. Besides the Canonists say, If the Excommunicated person doth not duly appeal, he must pray to the Excommunicator for absolution; and before he be absolved, he must make satisfaction; *Appellatio, licet non suspendat excommunicationem, tamen multum prodest; primo, devolvit causam ad superiorem; secundo, si Excommunicatus non appellat infra decennium, solum perat absolutionem ab Excommunicatore; tertio, si non appellat, non potest amplius negare contumaciam, Et si vult absolvi, prius satisfaciatur; & post decem dies Excommunicatus non potest appellari, nisi per viam querelæ; Mar. Socin. f. 284. n. 109. Excommunicatus ex quo non appellavit infra decem dies, postea non potest appellare; sed per simplicem querelam possit conqueri etiam post decem dies, Extra. l. 1. tit. 3. c. 8. glos. f.* And tho' a Sentence of Excommunication be always appealable, so as it shall never pass in *rem judicatam*, as for an absolution in favour of the Soul, since it is only medicinal: yet in other respects as to the principal cause; (that the unjust Excommunicator may be punished; that the party wronged may be satisfied for the injury done to him; that the charges awarded against him upon the pretended contumacy may be stopt; that the costs expended by the excommunicated person may be repaid; that the unjust Sentence may be relaxed; that the presumption for it may be extinguished; and that it may not be thought he acquiesced to that Sentence) the Canonists advise, that he ought to appeal from it within the said ten days after it was given, or after he knew that it was given against him; *prout Socin. supra f. 292. n. 346, 347. & f. 294. n. 22.* And they likewise advise that a Clergyman (having appealed from an unjust and intolerably erroneous Sentence of Excommunication) ought not to desire absolution from it;

it; and they say that if he confides on his Appeal, as just and lawful, and yet prays absolution, *he sinneth*; for by so doing he mocketh Justice, Truth and his own Soul: He tacitly confesseth himself guilty, when his Conscience knows, he is Innocent in the matter charged on him, and yet upon his Prayer he receives solemn absolution from no fault. This is contrary to the Rules of the Church; *Non est petenda absolutio, cum iniquè fertur sententia: Ea se non absolvi quis desideret, quàm se nullatenus perspicit obligatum*; 11. q. 3. c. 46. In the Decretals & Body of the Canon-Law the like case was resolved by the Pope himself, Declaring, That if a man alledgeth before the Judges of Appeals, that he was excommunicated by a Sentence expressly containing intolerable error, they ought not to absolve him; but to admit the proofs of his allegation, whereby it will appear, whether he wants absolution, or rather decree that indeed he was not excommunicated; *An absolutione indigeat conquirent, vel denunciatus sit potius non ligatus*; Extra. l. 1. tit. 29. c. 36. And the same Pope, viz. Innocent the 3^d (who by his Canons and Decretals, made in the afore-mention'd Council of Lateran, settled the course of the Ecclesiastical Courts) resolved, indeed in another cause, but in point with the Petitioner's case, viz. That the Subject may appeal from the indiscreet and unjust command of his Bishop, which command he was not bound to obey; and that upon the Excommunication the Judge of Appeal may declare that the Appeal was lawful, and that the Sentence of Excommunication was unreasonably given; *Si notorium existerit quod mandatum Episcopi indiscretum fuerit vel injustum, cui non tenebatur subditus obedire, lac. per consequentiam ei liqueat evidenter subditum legitime provocasse; Judex superior potest declarare subditum irrationabiliter existisse anathematis mactone percussum*; Extra. de app. c. 54. The Judges of Appeal or Court of Delegates must observe the Decrees of the Church; and in this Case the Church hath Decreed that the Christian unjustly excommunicated is to be declared upon an Appeal or Querel not excommunicated; and that the unjust Excommunicator was truly excommunicated, and that he ought to be further punished by those Judges; This is the judgment

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judgment of the Fathers and of the Councils of the Church inserted in the Statute-Book of the Canon-Law; *Qui illicite aliquem excommunicat, seipsum, non illum, condemnat*; 24. q. 3. c. 2. *Si quis non recto iudicio eorum, qui præsunt Ecclesie, depellatur & foras mittitur; si ipse non ita egerit ut mereretur exire, nihil leditur in eo, quod non recto iudicio ab hominibus videtur expulsus; Et ita fit, ut interdum ille, qui foras mittitur, intus sit; & ille, qui foris est, intus retineri videatur*; *Ibid.* c. 4. & 7. *Episcopus non alligat eos qui insontes sunt, nec solvit noxios; sed pro officio suo, cum peccatorum varietate audierit, scit; qui ligandus sit, qui solvendus*. *Ibid.* c. 44. *Qui nocet (ait Apostolus) recipiet illud quod nocuit; Capisti habere fratrem tuum tanquam Publicanum, ligas illum in terrâ, sed ut iuste alleget, vide; nam injusta vincula dirumpit iustitia; Ei, qui temere iudicat, ipsa temeritas necesse est ut noceat*, *Ibid.* c. 48, 49. *Apud Deum maledicuntur qui moribus dissonam profert Sententiam*; *Ibid.* c. 57. *Aeternum Ve maledictionis inveniet, qui bonos malos, & malos bonos dixerit*; cap. 59. *Ipse ligandi atq; solvendi potestate privat, qui hanc pro suis Voluntatibus, & non pro subditorum moribus exercet*; cap. 60. *Judicare subditis digne nequeunt, qui in subditorum causis sua vel odia vel gratiam sequuntur*; cap. 61. *Is, in quem Canonica non fertur sententia, pœnam non debet ferre canonicam*, *Ibid.* c. 64. And tho' the Excommunicators, in pronouncing their Sentence, begin with *In Dei nomine Amen*, and end with *Excommunicamus Iustitiâ id poscente*; yet if they give their Sentence contrary to Justice and Conscience, for *Exhibition-mony* & filthy lucre; for malice to the party, or to gratify his potent enemies, or for any other corrupt motives; the ancient Canons, and the Reformed Laws of the Church do Decree these Excommunicators *ipso jure* condemned, and to be grievously punished by the Judges of Appeal: for thus the Canon in *Conc. Lugd.* *Cum æterni tribunal Judicis illum reum non habeat, quem injuste Judex condemnat, &c.* *Sext. l. 2. tit. 14. c. 1.* is made as a Law in the *Reformatio Leg. Eccles.* p. 279. which ordains punishments against unjust Judges, Delegates and Ordinaries; *Quisquis Judex, Ordinarius sive etiam Delegatus, contra conscientiam et contra Iustitiam, in gravamen alterius partis quicquam per gratiam vel*

per sordes in iudicio fecerit, per annum ab executione officii non verit se remotum, ad astimationem litis quam laeserat nihilominus condemnatus: And this Rule is practised in the Ecclesiastical Courts, *Si aut iniquitas aut nullitas usa ex processo transmissio apparere possit, appellans gravatus obtinebit sententiam contra Iudicem cum expensis; et aequitati admodum consentaneum esse videtur ut Iudex subeat penas et solvat expensas, si injuste processerit, etiam in casu quando promotum voluntarie fuit officium ejus; licet enim iniquum aliquod à Iudice petitum fuerit, Iudex tamen aequum decernere debuit;* Clarkj. Prax. tit. 251. And tho' the Appellant, who was unlawfully excommunicated, may be so much a Christian as upon his appeal to forgive the unjust Excommunicator as for his own private interest of costs & damages, yet if he be a Clergy-man, he cannot renounce his appeal, nor the prosecution of it, nor the Decree thereupon given for his Innocency, his Reputation, and the honour of his Function; but above all, he must do all he can that the unjust Excommunicator may repent for his Sacrilege and Sin as aforesaid, that his Soul may be saved; for without Repentance he can never obtain Salvation; and he cannot repent, whilst he opposeth the Appeal, the Examination, and Retraction of his sinful Sentence of Excommunication.

There needs little or no more proof, besides what has been said in the foregoing Paragraphs, that an Appeal doth immediately suspend the definitive Sentence of Deprivation given by Ecclesiastical Judges, Ordinaries or Delegates, in Ecclesiastical causes of ordinary cognizance in the first instance: But it is necessary in the Petitioner's case further to insist upon his Appeal as having a suspensive effect; since all Acts made by any persons after the said Appeal, and prejudicial to his right and interest in his Archdeaconsry or Prebend were Attentates, Nullities and punishable; The Petitioner (upon the said Lisburn Commission's giving their pretended definitive Sentence, depriving him of his Archdeaconsry, and suspending him from his Prebend as aforesaid) instantly viva voce protested against the same, and entered his protestation apud acta, and made his actual Appeal from their said Sentence, and all their proceedings against him,

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him, and from their pretended Jurisdiction over him; and *infra decendium* he duly interposed his said Appeal form of Law with the demand of Apostles; which appeal was exhibited before them in Court, and which they accepted as exhibited, and made an Act of Court thereupon to deliberate whether they should admit it; and within twenty days after their said Sentence, during the Petitioner's said Appeal, and in his absence, and without any Citation made to him, they gave and published under a publick Seal, a Sentence against the Petitioner, not as *nuper* but as still Archdeacon and Prebendary; and thereby they sequestred all the Tithes and other profits of the said Archdeaconry and Prebend upon pretence of his non-payment of proxy money and other Fees as due to them and their noble office; By which publick Act they shew'd that the said Appeal was *suspensive*; as the common Lawyers say in *Dyer's Rep.* 346. and *Watson p. 39.* And the Temporal Judges have further resolved, That a Clergy-man, being deprived of his Dignity, Prebend or other Benefice by the Sentence of an Ecclesiastical Judge, is still Incumbent, upon his Appeal made from that Sentence, until the Sentence be affirmed by the Superior Judge, *Dyer* 105, 240. *Gro. Eliz.* 684. *Gro. Jac.* 335. *Palm.* 412. *Hob.* 82. 2. *Bulstr.* 182. 3. *Bulstr.* 72. *Goldsb.* 119. *Davis.* 73. 2. *Jones* 67, 210. 2. *Ventr.* 42, 43. *Doderid. Lect.* 14. *Co. 2. Rep.* 18. 4 *Rep.* 75. *Roll's* 1. *Rep.* 226. *Roll's* 2. *Abridg.* 223, 3 *Mod. Rep.* 285, 333. *Hugh's Parson's Law*, c. 17. 2. *R.* 2. q. *imp.* 143. 20. *H.* 6. 25. 12. *E.* 4. 14. And the Statute Artic. Cleri does imply that an Appeal suspends any force of a definitive Sentence; 10. *E.* 2. Art. 6. *Si aliqua causa coram Judice Ecclesiastico terminata, nec per appellationem fuerit suspensa*; prout *Lynn. Append.* p. 37. And this is the Resolution of the Learned *Lynwood* afore-mention'd (to whose Opinion the Secular Judges in their Reports give great deference, and he is our Oracle in the Canon-Law) That an Appeal presently suspends or extinguisheth the Sentence of Deprivation given even in criminal causes. *Appellatio legitime interposita non solum suspendit, sed extingit pronunciatum; Reservat statum. appellantis integrum; etiamsi de crimine capitali sit damnatus: super crimine damnatus*

natus appellatione secutâ, videtur non damnatus: Pendente appellatione appellatio extinguit sententiam & ejus effectum tam in criminalibus quàm in civilibus causis, Lynw. p. 106, 107. And this suspensive effect of an Appeal is expressly allowed as a Rule in the Civil and Canon-Law; *Communis utriusque Juris Regula est Quod attentata appellatione pendente veniunt revocanda, & quod Omnia Jura clamant appellatione pendente nihil esse innovandum*, Lancelot. de Attent. p. 182. n. 78. And this suspensive Appeal has three notable effects, viz. First, It secures the Appellant in his Estate; Secondly, It suspends the Sentence of Deprivation, and also the Jurisdiction of the Judge, who gave that Sentence; Thirdly, It extinguisheth the Judgment; and is said to be an *Antidote* against the venom of that Judge; *Triples est Ratio hujus Regula; Prima, quia appellatio conservat statum appellantis; Secunda, Appellatio suspendit sententiam & Jurisdictionem Judicis à quo; Tertia, Appellatio extinguit judicatum, & dicitur theriaca adversus venenum, id est sententiam Judicis à quo, prout Id. Lancel. p. 182. n. 80. Appellatio extinguit pronunciatum quatenus præterita, & suspendit quatenus futura respicit; Id. p. 184. n. 114.* And the Appeal, being exhibited before the Judge who gave the Sentence, is of so great power (whether he reads and admits it or not) that it extinguisheth even the presumption which otherwise would be due to his Sentence as just: *This is the common opinion of Civilians; Id. n. 110, 115; and that the Appeal is more to be favoured than the Sentence, because a presumption lies for the Appeal in favour of Innocency, Ibid. n. 118.* And the Canonists likewise say that he knows nothing of the Law, who does not know that a Collation or Institution is void when it is granted upon a Sentence of Deprivation, which is suspended by an Appeal; *Hanc Regulam Juribus & auctoritatibus comprobare superfluum est, cum hæc apud omnes etiam idiotas sit trita & quasi pro adagio usurpata conclusio, Institutionem factam appellatione pendente haberi pro attentata, Id. p. 182. n. 79.* Depositus, qui à sententia depositionis appellavit, pendente appellatione officium suum exercere potest; quia depositus, qui appellavit, non dicitur depositus; etiam excommunicatus post appellationem non tenetur desistere

desistere à divinis ; *Ibid.* n. 84, 88. This is the Rule in the Civil-Law, *Cod. l. 7. tit. 62. c. 3.* And in the Canon-Law, *2. q. 7. c. 31.* And in the Reform. Leg. Eccles. *De App. c. 7, 31, 41, 42: Appellatione interposita, sive recepta fuerit sive non, medio tempore nihil novari oportet :* And this is the practice of Ecclesiastical Courts, *Si Clericus, (qui in beneficiâ causa obtinuit sententiam à quâ appellatum fuit) curaverit se institui aut induci, hujusmodi institutio et inductio dicitur esse atemptata ; et per Judicem ad quem sunt primò et ante omnia tanquam atemptata revocanda ; quia per appellationem hujusmodi tollitur seu suspenditur omnis vis et effectus dictæ sententiæ, donec finiatur appellatio, perinde ac si nulla omnino lata fuit sententia ;* *Clarkj. Prax. tit. 237:* There are ruled cases upon this point in numerous places in the Body of the Canon-Law ; and these are the usual final clauses of Papal Commissions upon Appeals, *Mandamus, quatenus si ita est, revocato in irritum, or in statum debitum, quicquid post appellationem noveritis esse factum or attentatum ;* *Extra. de app. 48, 49.* And in a case cited in *Extra, l. 2. tit. 24. c. 19.* it was resolved thus, *Sententia diffinitiva, à quâ est appellatum, non debet executioni mandari ; quod si fiat, executio debet revocari ; et idè deferre debet Judex appellationi ; et nihil innovare, ea pendente :* And the gloss *i.* upon the place says, *Executioni mandari non debuit ; tum quia beneficio appellationis extinguitur pronunciatum ; tum quia interposita appellatione nihil innovari oportet ;* and the gloss *k.* *Cum appellatur à Sententiâ diffinitivâ, si appellatione pendente fuit mandata executioni, Judex appellationis debet revocare in irritum quicquid factum est post appellationem ; et antequàm cognoscat an appellatio sit justa vel injusta.* And both the Temporal and Ecclesiastical Judges in England, in the Lord Dyer's Discourse of Appeals, recited in *Co. A. Inst. 340.* resolved, *That in every case generally when Sentence is given, and Appeal made to the Superior, the Judge who gave the Sentence, must obey the Appeal, and proceed no further, until the Superior hath examined and determined the cause of the Appeal ; but where the Prince had empowred that Judge to execute his Sentence, notwithstanding any Appeal, he needs not defer to it, he is not obliged to obey that appeal, as they say.*

An Appeal (according to the *Resolution* of the said Judges) may have a *suspensive* or *devolutive* effect: and this *distinction*, often before intimated, doth plainly discover where the *gist* and *intricacy* of the Petitioner's case lies. If the clause *appellatione remota* had been inserted in the said *Lisburn* Commission, those Commissioners were not bound to defer to his Appeal, so as to stop their Proceedings against him, and they were not punishable for executing their Sentences against him; and the Institution and Instalment of others into his Archdeaconry and the Sequestration of his Prebend, or other acts done by the said Commissioners after the said Appeal would not be Nullities, as the said Judges resolved; and therefore the Lord Chancellor, without a special mandate of the late King or the Lords Justices of this Kingdom, was not obliged so to admit the said Appeal, as to grant thereupon a Commission of Delegates; especially if the Appeal did not express a just cause of grievance; so saith Pope *Innocent* the 4th, *A Delegatis Papa non licebit appellare, nisi expressa iusta causa appellationis, si eis commissa fuerit appellatione remota*; Innoc. f. 140. Col. 1. n. 5. *Appellans à sententia diffinitiva causam appellationis allegare tenetur, quando commissa est causa appellatione remota*, Socin. Jur. Reg. 28. n. 5. And tho' this clause, where it is put into a Regal Commission Ecclesiastical, is as a *Prerogative-Prohibition*, restraining the ordinary remedy and method of appealing to the Court of Delegates; yet as the said *Resolution* shews, if the Appeal was just and lawful, viz. duly interposed, and specifying an unjust grievance, the Appeal might have a *devolutive effect*, it might be presented to the Government or to his Majesty, and ought of right and justice to be received and admitted. But the said *Prerogative* clause was not inserted in the said *Lisburn* Commission; and it was purposely omitted, lest it should be a *High Commission*, which was so lately damned; and the said Commission expressly required the Commissioners to exercise all lawful Jurisdiction, and thereby they were implicitly commanded to defer to every just and lawful Appeal, which should be made from them; for the Law commanded them to obey such Appeals;

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peals; and an Appeal is a necessary part of Ecclesiastical Jurisdiction; and the Petitioner's Appeal was made from pretended definitive Sentences of Ecclesiastical Judges, in causes of ordinary cognizance and in the first instance, and was not prohibited by any Law; but did express many manifest and intolerable grievances; and he likewise appealed from the said Commissioners for denying Apostles upon his said former Appeal; which Apostles or Dimissories they could not in justice deny.

A just and lawful Appeal is a natural defence, as hath been mentioned before, and resolved by the said Judges; and is also a *maxime* in the Canon-Law, *Clem. l. 2. tit. 11. c. 2.* So that no Emperor can take this defence away from the Subjects; because it is due to them by a natural and divine right, as the Canonists say; *Appellatio, cum sit defensio, introducta est jure naturali, gentium, et etiam de jure divino: Veneri Exam. Episc. p. 346. n. 1. and Navar. Consil. Tom. 1. p. 138. F.* And they declare, that an Appeal is so much a natural right, that not only an excommunicated person, but even the Devil himself, if he was Impleaded in a Court of Judicature, could not be debarred his due, and the benefit of appealing from any grievous act of the Judge; *Nisi appellatio esset de jure naturali, D. Paulus minime appellasset Actor. 25. Appellatio non debet negari excommunicato, nedum Diabolo, si adesset in judicio peteretq; Bert. Prax. Criminal. Tom. 4. p. 177. Lancelot. de Attent. 7. 196. n. 14. Vener. Exam. p. 294. c. 30.* And the Lords of the Rota in their decisions declared, that not only a presumptive but also a true contumax may be allowed to appeal within the ten days after a definitive Sentence; because, upon his proofs made before the Judge of Appeal, it may appear that he was not in contempt; and they further say, that otherwise the party is excluded from that defence, which cannot be denied to the greatest enemy; *Parti auferetur defensio, quæ est appellationis remedium, quod non denegandum est etiam Diabolo, si esset in judicio; Nov. Decis. 364.* And the Council of Trent (as averse as it was to Appeals) could not but acknowledge that a just and lawful Appeal cannot be denied any man, since it is due by divine right: *Appellatio est defensio de jure divino, & nemini auferenda est in casibus*

casibus in quibus quisquis iuste & de jure appellare potest, Trid. Syn. Sess. 13. c. 3. Vener. Exam. Episc. p. 132. n. 20. Pope Clement the 7th A.D. 1529. (upon the Appeal of Q. Catherine from the Pope's special Commissioners Ecclesiastical in a cause of pretended incest with K. H. 8th) certified the Parliament of England, that all the Cardinals in a Congregation held at Rome had unanimously resolved that such a Commission of Appeal in the Queen's case could not be denied; *Unanimi omnium Cardinalium voto conclusum est, Commissionem causæ appellationis hujusmodi per nos negari non posse*, prout Lord Herbert's Hist. of K. H. 8th. p. 336. And tho' the said Pope had inserted in his special Commission to the said Commissioners, *Woolsey and Campejus*, the *Prerogative clauses*, authorizing them to execute their Commission *summarie de plano, sine strepitu & figura judicii, omni recusatione & appellatione remotis, non-obstantibus Conciliis Generalibus, Apostolicis constitutionibus, & ordinationibus editis, ceterisque contrariis quibuscunque*; Yet the Queen's Appeal was allowed as aforesaid: and also the said King (believing that an Appeal, being a natural right, could not be denied, notwithstanding the said clauses) did constitute two Proctors, empowering them, if need were, to appeal from the said Commissioners, *Id. Herb. p. 262, 263*. And the said King's Agent in the Court of Rome (who did what he could to stop a Commission upon the Queen's Appeal) wrote, that the Pope could not refuse his granting the Commission, and that nothing but injustice and meer force could stop it, of which the whole World would cry out shame; *Commissionem hujusmodi Pontifex non potest negare, nisi Injustitia et vera vis inferatur, adversus quam-omnis mundus exclamaret*; prout Burnet's Hist. of Reform. part. 1. Collec. p. 27. It is the Common Law of the Catholick Church, that the Subject who is oppressed or unjustly aggrieved may appeal from Ecclesiastical Judges, *Ordinaries or Delegates*; because they are alike subject to iniquity and unskillfulness; as the Law hath presumed, and therefore hath provided this remedy of Appeal: *Jure communi liberum est appellare, quandocunque aliquis gravatur*; Extra. l. 1. tit. 3. c. 1. glos. 9. *Omnis oppressus sive injuste gravatus, quicumque sit,*

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fit, possit appellari; *Duraud. l. 2. p. 828. n. 1. Appellari potest generaliter ab omnibus tam Delegatis quam Ordinariis, Ibid. p. 830, & 838. In qualibet causa mundi, in qua modus exceditur, appellatio admittitur, etiamsi in executore Apostolico; Lancell. de Attent. p. 292. n. 24. Leges etiam seculares post sententiam beneficium appellationis non denegant aggravatis; Extra. l. 2. tit. 24. c. 19. This is also a rule of natural equity, Indultum à jure beneficium non est alicui auferendum, ut decem dies dati ad appellandum, Sext. Jur. Reg. 17. Hoc pro certo teneas quod ante sententiam potest appellari, quoties pars gravatur & allegatur causa; 2. q. 6. c. 1. glos. In a Synod held in the Diocese of Oxon. (as *Lynwood Reports*) it was decreed that no Appeal should be allowed from any grievance in Ecclesiastical Judicature before the Cause was definitively sentenced; but in the Provincial Council A. D. 1328. that Decree was totally reprobated as an unchristian and unnatural Doctrine, Nos statutum hujusmodi ad auferendum oppressis appellationis remedium, & quicquid ex eo vel ob id fuerit subsecutum penitus reprobamus; *Lynw. Const. p. 116.* And that judicious Commentator says, That this Decree was repugnant to the Canons of the Christian Church, contrary to the Common-Law, and contrary to the rules of natural Justice; *Ibid. glos. f. g.* Wherefore if a whole Synod of learned men might be mistaken in their prohibiting Appeals even from interlocutories, (altho' the Civil-Law favoured their opinion, *Cod. l. 7. tit. 65. c. 7. Extra. de app. c. 12.*) it may be hoped that the Court of Delegates will decree that the two Prelates at *Lisburn* were in error, when they denied an Appeal from their definitive Sentences, and when that Appeal expressed manifest and unsufferable grievances in those Sentences. The English Convocations of the Provinces of *Canterbury* and *York* in the year 1640, amongst their Canons, decreed that Clergy-men should pay the benevolence of six Subsidies upon pain of Suspension, Deprivation or Excommunication, with this clause added, *omni app. semora*, which (as *Mr. Bagshaw* said in his *Argument in Parliament, p. 33.*) was a flat denial of the King's Subjects to have the benefit of the Law, and also a high point of usurpation upon the Crown,*

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and a *derogation* to the Prerogative, by their *restraint* of Appeals to the King; but those Canons were condemned by that Parliament 13 Car. 2. c. 12. *Cbichely* Arch-Bishop of Cant. A. D. 1427 (being unduly and unjustly *Suspended* by the Sentence of Pope *Martin* the 5th from his *Legatine* Power and Ecclesiastical Jurisdiction in the Kingdom of England, during the said Pope's pleasure, for not maintaining Papal encroachments in that Realm) appealed from that Sentence to the next General Council with demand of *Apostles*; by vertue of which Appeal the said Arch-Bishop preserved to him his said Power and Jurisdiction entire; prout *Burnet's History* of Reformation, part. 1. p. 110. and part. 2. Collect. n. 35. p. 321. The most noble *Festus* and his Council at *Cæsarea* perhaps understood the learning of Appeals as well as the said *Lisburn* Commissioners, and had as little favour to the Appellant; yet they could not deny an Appeal even from an interlocutory Sentence: Those Judges did not stay long in deliberating whether the Appeal lay or not, in the first instance, from the opinion or sentence of those *Cæsarian*-Commissioners against a pretended Criminal; for the Law of all Civil Nations allow'd it, and required such Regal Delegates to defer to it; *Eos, qui imaginem principalis disceptationis accipiunt, appellationum adminicula necesse est accipere: non solum Delegatus ab alio, sed à Principe appellationem ejus, qui dixerit appellandum, recipere tenetur; Cod. l. 7. tit. 62. c. 16.* And *Festus* declared in the *Acts* 25. 27, that it was unreasonable upon the Appeal not to grant *Apostles*; that is, to signify to the Emperor the matter with which the Criminal was charged, and whether he had obeyed the Appeal, or the reason why he could not; for so was and is the Civil Law, *A Proconsulibus provocari permittimus, ita ut appellanti Judex præbeat opinionis exemplum & acta cum refutatoris partium, suisque literis ad nos dirigat, Ibid. c. 19.* Whereupon the Civil-Lawyers observe, that the Sentence of a Judge is but his opinion in the Law; and that he ought to deliver *Apostles* to the Appellant whether he demands them or not; and that the direction of an Appeal to the Prince or his Chancellor is all one; *Ibid. glos. a. c.* And all the

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the Laws declare that the Judge ought not to be angry with the Appellant for appealing from him; because the Judge ought not to be displeased with the Law, *which gives that right to the party*, who thinks himself wronged; *Non Judicem oportet injuriam sibi fieri existimare, eò quod litigator ad provocationis auxilium convolat; ibid. c. 20. and so says Reform. Leg. Eccles. De Appel. c. 18.*

Those who object and say, *That no Appeal lies in the Petitioner's case*, ought to prove what they say; for the Rule of the Law lies against them: *Appellatio in omni casu censetur permissa, nisi expresse reperiatur prohibita: Allegans in aliquo casu non posse appellari, id debet probare, quia habet Regulam contra se; Lancelot. de Attent. p. 196. n. 8, 9. Baldus de App. f. 232:* It is true, an *unlawful Appeal* ought not to be allowed; and this hath been more than once afore acknowledged; for such Appeals in truth are *not Appeals*, but vain and vexatious *complaints* to stop the course of Justice, and therefore neither *Ordinaries* nor *Delegates* ought to defer to Appeals, which are manifestly *frivolous* and *frustratory*; as Appeals in *enormities convicted and confessed*; or in *Criminals*, tho' not *Judicially* condemned, yet persons *notoriously* and *unexcusably* guilty: but the *Petitioner's Appeal* is *notoriously* out of those cases; and also out of the case of *interlocutories*, and out of the causes of 2d or 3d *instances* and the *clauses* of *de plano & appellatione remota* in Ecclesiastical Commissions; yet even in this *great case* of *app. rem.* (as before hath been proved) an Appeal, *shewing a just cause of grievance*, especially from *diffinitive Sentences*, ought to be *admitted* of course, *by right*, and without difficulty: for *that clause* has no operation, where the Law *expressly* allows an Appeal; as it doth from *definitives*, and also from *interlocutory Sentences*, when the Appeal *expresseth* a just cause; yea whether *that cause* be expressed in the Law or not; or whether *that clause* be inserted in the Commission or not, if the *cause* in the Appeal be probable, *Hodie sive sit remota appellatio sive non in Rescripto; & sive sit expressa in jure sive non causa propter quam appellatur, dummodo sit probabilis, bene tenet appellatio; Extra. de app. c. 53. glos. b, c. & Ibid. c. 59. glos. c, d. In his casibus,*

casibus, ubi de jure licet appellare, etiam non obstante quod remota est appellatio, poterit appellare, Innoc. f. 4. Col. 4. Tener appellatio, licet inhibita est in Literis; quia remotio appellationis non impedit appellationem, ubi manifestè quis gravatur; & ideo omnia revocantur quæ post appellationem legitimam facta sunt, Extra. l. 2. tit. 13. c. 10. glos. g. Qui appellat à gravamine justè appellat, licet remota est appellatio in Rescripto; quia non adversus Literas Principis, sed adversus Judicis calliditatem & malitiam appellat; 2 q. 6. c. 29. Sect. 9. & glos. m. The Canon-Law concerning Appeals and the Expounders of it declared, as aforesaid, that the said clause *app. rem.* in Ecclesiastical Commissions puts Appeals made from definitive & interlocutory Sentences in the same condition, viz. in both cases Appellants must express the grievance in their Appeals; and when *that clause is omitted*, the Appellant need not to alledge any cause in his Appeal from the definitives given against him by Commissioners; which distinction, *afore insisted on*, may well be repeated, being of great consequence in the Petitioner's case: for all Law and good Conscience obliged the said *Lisburn* Commissioners to yield unto his Appeals, tho' doubtful, much more being just, lawful and undeniable; especially the Appeal was made from their pretended most grievous sentence of Excommunication, and from their denial of Apostles, which they would not grant to him, even refutatories: *Sacri Canonès ante & post litis contestationem, & in prolatione sententiæ, et post, singulis facultatem tribuunt appellandi*; Extra. De app. c. 12. Post appellationem appellatur nullâ causâ expressâ, sed sufficit dicere, ab iniquâ sententiâ appello; Ibid. glos. c. Post appellationem interpositam Literæ dandæ sunt ab eo, à quo appellatum est, ad eum qui de appellatione cogniturus est, siue Principem siue quem alium, 2 q. 6. c. 31. Judex à quo appellatur, si appellationem non recipit, dabit Literas appellanti, ut eas det Superiori; in quibus significabit ei, quare appellationem non recipit; Ibid. glos. k. Apostolos appellanti ad nos precipimus exhiberi; Ex Conc. Lugd. in Sext. de app. c. 1. Appellans à diffinitivis sententiis appellationis causam non tenetur exprimere, sed Judex debet appellationi deferre; Ibid. glos. h. Cum appellatur à diffinitiva, Judex non potest non deferre ap-

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appellationi; tum, quia functus est officio suo; tum, quia tunc non
 queritur ex quâ causâ appelletur; Durand. Spec. l. 2. p. 849.
 n. 25. Appellationi quæ est manifestè rationabilis & legitima, ut
 ea quæ fit ex causâ in jure expressâ, debet Judex deferre, nam
 & jus eam admittit; Id. ibid. p. 854. n. 4. Post sententiam sim-
 pliciter et sine causâ fas est cuilibet appellare; nec est verisimile
 quod Princeps per hanc clausulam app. rem. velit jus litigatoris
 auferre, cum eam in suo Rescripto inserit, et unico verbo tot jura
 tollere; Ibid. p. 838. n. 25. Si Judex dubitat, an sit deferendum
 appellationi vel non, in dubio potius deferetur appellationi quàm
 sententiæ; Ibid. p. 855. n. 6. Judex in dubio semper deferat
 appellationi; Hostiens. Sum. Col. 663. Lancelot. suprâ. p. 196. n. 5.
 Extra. de app. c. 59. glos. a. c. And it is the opinion of the
 Temporal Judges, that in doubtful cases, the presumption
 lies rather for the Appeal than for the Sentence, Dyer 178.
 3. Bulstr. 41, 42. Co. 5. Rep. 98. b. And the Lord Chief Justice
 Vaughan in his Reports affirms, That if any man thinks, that
 a person, concerned by the Judgment, action or authority
 exercised upon his person or fortune by a Judge, must submit
 in all or in any of these, to the implied discretion or unerring-
 ness of his Judge, without seeking such redress as the Law
 allows him; it is a persuasion against common reason, the received
 Law, and usage both of this Kingdom, and almost all others;
 and he further says, That if a Court, inferior or superior, hath
 given a false or erroneous judgment, there's nothing more frequent
 than to reverse such Judgments by Writs of false Judgments,
 Writs of Error or Appeals, according to the course of the King-
 dom: and that when Judges have given corrupt or dishonest judg-
 ments, they have been complained of in all ages; and there
 are several Records of their convictions and punishments,
 Vaugh. Rep. 139.

As the unjust Sentences of Ecclesiastical Judges, so their
 unlawful denials of Appeals and Apostles are likewise punishable;
 and more punishable in criminal than in civil Causes; for the
 injury to the Innocent is the greater, by being wronged, and
 also by being denied the ordinary redress against wrong: not
 only the ancient Law of the Church, but the Reformation

of it hath appointed deprivation or deposition to be the punishment for those Ecclesiastical Judges who deny deference to a lawful Appeal in a criminal cause; *Si Juxta legitima appellationi non detulerit, puniendus est; et si criminalis fuerit causa, deponetur; Reform. Leg. Eccles. de app. c. 48.* The Decree of Gregory the Great, directed to all Christian Provinces (which is part of the Canon-Law in 2 q. 6. c. 11.) declares that the Ecclesiastical Judge, if he be in Clerical Orders, is *ipso jure* degraded from those Orders for his not obeying the Appeal of an accused Clergy-man made to the Prince or his Delegates; this Judge acted as a Wolf in Sheep's cloathing; he was cruel in denying a natural defence; he would not to be so dealt withal, when he was sentenced: *Liceat illi nos appellare, & nostrâ auctoritate aut ante nos aut ante Legatos nostros ex latere missos suas exercere atque diffinire actiones; nullusque illum ante hæc judicare præsumat: Nihil prius de eo, qui ad sinum sanctæ Ecclesiæ confugit, et ejus auxilium implorat, decernatur, quam ab ejusdem Ecclesiæ auctoritate fuerit præceptum: si autem à quoquam secus præsumptum fuerit, ab officio Clerici submotus, auctoritatis Apostolica reus ab omnibus judicetur; nè lupi, qui sub specie ovium subintrarunt, bestiali sevitia quosque audeant lacerare, & quod sibi fieri nolunt, aliis præsumant inferre.* And the Commentator on the above-word *submotus* observeth, *Ecce pœna illius qui non desert appellationi! Ibid. glos. e.* The Law in the Decretals sayth, that this is a great contempt to the Superior Judge, and therefore ought to be greatly punished, *Qui non desert appellationi legitima ex tanta excessu debet puniri; & si Clericus fuit, deponi debet: Extra. de app. c. 31. & glos. k;* and this Law is thought reasonable by the greatest Canonists; *Innoc. in loc. f. 135. Hostiens. Col. 647. Durand. l. 2. p. 854. n. 1. Bald. super. 2. Decretal. f. 225. Col. 1. & f. 228. Col. 3. Alciat. Prax. p. 258. Sum. Sylvest. p. 25. Marant. Spec. p. 359. n. 210.* The Civil-Law condemneth both the Judge, who shall refuse to receive the Appeal, and his Register who does not resist the Judge in the refusal, to pay each of them 30 pound weight of gold; *Si quis appellationem suscipere recusaverit que interposita fuerit, triginta auri pondo cogatur inferre;*

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inferre; & in totidem officialis ejusdem puniatur, nisi ei Judici pertinaciter restiterit, atque actis contradixerit; Cod. l. 7. tit. 62. c. 21. And by another Law the Judge is bound, not only to accept the Appeal, and also to give to the Appellant Apostles within 30 days after Sentence, *Judicibus non solum appellationis suscipienda necessitas videtur imposita, verum etiam triginta dierum spatia ex die sententia definita sunt intra qua gesta una cum Relatione litigatoribus convenit praestari; alias Judices una cum eorum officio multabuntur, Ibid. c. 24.* which is inserted in the body of the Canon Law; 2. q. 6. c. 41. u. 6. Therefore the Appellate or inferior Ecclesiastical Judge, being subject to error and also to the Law, may blame himself, when he is punished by the Law for his slighting the Law of Appeals, the right of his Superior and of the Appellant; *Justum est equidem ut in appellatum jura insurgant qui jus, & Judicem, et Partem eludit; Sext. de app. c. 1. in fin.*

By the foregoing part of this Argument it doth plainly appear, that the Ecclesiastical Jurisdiction committed to the said Lisburn Commissioners was only Ordinary, and not Extraordinary; that they were appointed by their Commission to act and decree as the Ordinary, that is, as the Bishop or Archb. of the Dioceses of Down and Connor; and that the Petitioner's Appeals, made from the pretended Sentences of the said Commissioners, and from their denial of Apostles, were due to him by common Law and Justice, as ordinary remedies and redress from grievances, and as a right against wrong: Therefore since the Law abhors failure of Justice, 4. Inst. 71, it cannot be imagined that the Petitioner should have an ordinary right and remedy of Appeal which he could not presently come at and get; for as the Judges of the Common Law say, It is the greatest absurdity imaginable in the Law to give to the Subject a right, when he is wrong'd, and yet to give him no remedy; or which is all one, a right and no right, or a remedy and no remedy; Co. Litt. 94. Vaugh. Rep. 47.

NOW the Objections being removed, and the difficult Points cleared, it may be proved easily and fully, that the Petitioner's Appeal lies of course in the High Court of Chancery for a Commission

mission of Delegates to hear and determine it: First it may be proved by the Statute-Law. The Petitioner's *Appeal* from the said *Lisburn-Commissioners* to the Chief Governors of this Kingdom in her Majesty's High Court of Chancery of Ireland is certainly within the Irish Act of Appeals. This Act expressly declares, That in and for all manner of causes, griefs and cases, as any Subject of Ireland was wont and accustomed to have in his provocation, appeal and other process in cases of debate and contention to the Bishop or Court of Rome, or the See Apostolick; being now grieved shall hence-forward have, take and use his provocation, appeal and process to the Chief Governor, whatsoever he be, of this Kingdom for the time being; and that upon such provocation, appeal or process made to the said Governor, the Chancellor of Ireland, or Keeper of the Great Seal for the time being (by the assent of the Chief Justices of the King's Bench and Common-Place, the Master of the Rolls, and the Under-Treasurer of Ireland for the time being, or any two of them, so as the said Under-Treasurer be one) shall grant a Commission or Delegacy to some discreet & well learned persons within this Kingdom for final determination of all causes and griefs contained in the said provocation and appeal, and in the principal matter, and all circumstances and dependances thereupon. It is observable upon this Act, that it was made immediately after the Act cap. 5th. which had recognized K. H. 8th to be Supreme Head of the Church of Ireland, and authorized him to depute Ecclesiastical Commissioners and Visitors; and then this Act of Appeal provided that all the Subjects of Ireland should take their Appeals here in all causes and cases as they used or might take them to Rome; this provision was made for lack of Justice, when all manner of Appeals formerly made to Rome were prohibited; and the Makers of those Acts knew that by Canon-Law & common Practice Appeals were made to Rome as well from Papal Delegates as from Popish Bishops, as well from Regulars as from Seculars, when they were unjustly grieved; *Conceditur omnibus oppressis appellare ad sedem Apostolicam, nec ab eâ concessione reperitur usquam Religiosus exclusus*; Navar. Tom. 1. p. 139. Those Patriots well remembered the Appeal of Queen Catherine from Woolsey and Campejus, the

the *Pope's Commissioners* afore-mentioned. Indeed the English Acts of Appeals 24 H. 8. c. 12. and 25 H. 8. c. 19. might seem preposterous, if they had provided Appeals from *Regal Commissioners for Ecclesiastical Causes*, when the said King was not declared *Head* of the Church of *England* until the Act 26 H. 8. c. 1. Besides these Acts were less extensive and beneficial to the *Appellants* than the said Irish Act; they limited Appeals, and allowed them only from definitive Sentences, and only from the Courts of Archdeacons, Bishops and Arch-Bishops, and their Commissaries; or from the Ecclesiastical Judges in *Exempt places*, which were *Religious Houses* fallen to the Crown upon their dissolution; and the negative words in in these Acts require the Appeals to be made according to the form prescribed in those Acts and not otherwise, and the Temporal Judges in 4. Inst. 340 say, that *tho' a lawful and just Appeal lies from Regal Commissioners, and the Prince cannot justly deny it*; and that *a new Commission ought to be granted to hear and determine the Appeal made from the Commissioners, Delegates, and Visitors of the Queen primo Eliz. yet those Appeals would be out of the form and order prescribed by those Acts*; but those limited clauses and negative words were omitted in this Irish Act; and therefore the Subjects of Ireland having just and lawful cause, may appeal from Regal Commissioners and Visitors; from Ecclesiastical Commissioners of Royal Donatives and free Chapels; from Cathedral Deans; from Prebendaries, Parsons and Vicars, who have Peculiar Jurisdiction; from interlocutory sentences and grievances in Ecclesiastical Courts; from extrajudicial Acts, and comminations of Bishops out of Court; from them as enemies or suspected to be such to the Appellant; from their incompetency and nullities; from their excessive taxation of costs; and from their definitives upon notice thereof even after 15 days; and these Subjects may likewise appeal *omisso medio* to the Prince or High Court of Chancery; for in these and other cases, Appeals lay to the Court and Chancery of Rome, by the Canon-Law and the allowance of the Apostolick See; and such Appeals lie, tho' out of the letter of the said English Acts, yet within

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mission of Delegates to hear and determine it: First it may be proved by the Statute-Law. The Petitioner's *Appeal* from the laid *Lisburn-Commissioners* to the Chief Governors of this Kingdom in her Majesty's High Court of Chancery of Ireland is certainly within the *Irish Act of Appeals*. This Act expressly declares, That in and for all manner of causes, griefs and cases, as any Subject of Ireland was wont and accustomed to have in his provocation, appeal and other process in cases of debate and contention to the Bishop or Court of Rome, or the See Apostolick, being now grieved shall hence-forward have, take and use his provocation, appeal and process to the Chief Governor, whatsoever he be, of this Kingdom for the time being; and that upon such provocation, appeal or process made to the said Governor, the Chancellor of Ireland, or Keeper of the Great Seal for the time being (by the assent of the Chief Justices of the King's-Bench and Common-Place, the Master of the Rolls, and the Under-Treasurer of Ireland for the time being, or any two of them, so as the said Under-Treasurer be one) shall grant a Commission or Delegacy to some discreet & well learned persons within this Kingdom for final determination of all causes and griefs contained in the said provocation and appeal, and in the principal matter, and all circumstances and dependances thereupon. It is observable upon this Act, that it was made immediately after the Act cap. 5th. which had recognized K. H. 8th to be Supreme Head of the Church of Ireland, and authorized him to depute Ecclesiastical Commissioners and Visitors; and then this Act of Appeal provided that all the Subjects of Ireland should take their Appeals here in all causes and cases as they used or might take them to Rome; this provision was made for lack of Justice, when all manner of Appeals formerly made to Rome were prohibited; and the Makers of those Acts knew that by Canon-Law & common Practice Appeals were made to Rome as well from Papal Delegates as from Popish Bishops, as well from Regulars as from Seculars, when they were unjustly grieved; *Conceditur omnibus oppressis appellare ad sedem Apostolicam, nec ab eâ concessione reperitur usquam Religiosus exclusus*; Navar. Tom. 1. p. 139. Those Patriots well remembered the Appeal of Queen Catherine from *Woolsey* and *Campejus*,
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the Pope's Commissioners afore-mentioned. Indeed the English Acts of Appeals 24 H. 8. c. 12. and 25 H. 8. c. 19. might seem preposterous, if they had provided Appeals from Regal Commissioners for Ecclesiastical Causes, when the said King was not declared Head of the Church of England until the Act 26 H. 8. c. 1. Besides these Acts were less extensive and beneficial to the Appellants than the said Irish Act; they limited Appeals, and allowed them only from definitive Sentences, and only from the Courts of Archdeacons, Bishops and Arch-Bishops, and their Commissaries; or from the Ecclesiastical Judges in *Exempt places*, which were *Religious Houses* fallen to the Crown upon their dissolution; and the negative words in in these Acts require the Appeals to be made according to the form prescribed in those Acts and not otherwise; and the Temporal Judges in 4. Inst. 340 say, that *tho' a lawful and just Appeal lies from Regal Commissioners, and the Prince cannot justly deny it*; and that *a new Commission ought to be granted to hear and determine the Appeal made from the Commissioners, Delegates, and Visitors of the Queen primo Eliz. yet those Appeals would be out of the form and order prescribed by those Acts*; but those limited clauses and negative words were omitted in this Irish Act; and therefore the Subjects of Ireland having just and lawful cause, may appeal from Regal Commissioners and Visitors; from Ecclesiastical Commissioners of Royal Donatives and free Chapels; from Cathedral Deans; from Prebendaries, Parsons and Vicars, who have Peculiar Jurisdiction; from interlocutory sentences and grievances in Ecclesiastical Courts; from extrajudicial Acts, and comminations of Bishops out of Court; from them as enemies or suspected to be such to the Appellant; from their incompetency and nullities; from their excessive taxation of costs; and from their definitives upon notice thereof even after 15 days; and these Subjects may likewise appeal *omisso medio* to the Prince or High Court of Chancery; for in these and other cases, Appeals lay to the Court and Chancery of Rome, by the Canon-Law and the allowance of the Apostolick See; and such Appeals lie, tho' out of the letter of the said English Acts, yet within

the equity of them; or within the disposition of the Common-Law; prout Clark's *Prax.* tit. 3, 102, 237, 274. Dyer 240. Moor. 850. Co. 13. Rep. 70. Litt. Rep. 277. 2. Broun. 28. And this Irish Act declaring that it was provided to the Subjects for their lack of Justice, did imply that Appeals were due *ex merito Justitia*, and therefore it directed them to be made *ad officinam Justitia*, to the great office of Justice in the High Court of Chancery, where remedial Commissions upon Appeals are formed and thence issued to the Court of Delegates; and since the Makers of the said Irish Acts 28 Henr. 8. cap. 5 and 6 well understood, That Regal Visitors and Commissioners might vex the Subjects, and visit them, as *immoderately* and *excessively*, as the Papal Delegates and Exactors formerly did or could do, not only in process or *sequestration*, but in the censures of Suspension, Interdict and Excommunication; and that the ordinary remedy from those grievances was by appealing to the Chancery of Rome; it cannot be reasonably thought that this Parliament intended that they and their Heirs and the other Subjects of Ireland, when aggrieved by the King's Commissioners or Visitors, should not have the presence of Justice and the common right of an Appeal, and as cheap a remedy and as ready as they formerly had at Rome; for this Act in the beginning of it told all the Resiants and people here, that now they should have their Appeals with more speed and justice, and with less delay and expence than heretofore they had in their appealing to Rome; but if this Act designed, that the people of Ireland, tho' intolerably oppressed by Regal Visitors and Ecclesiastical Commissioners, should lack justice and the natural right of appealing from those Commissioners, they would rather have endured those expences and delays than to have no appeal, no justice at all. The same Irish Parliament by the Act 28 H. 8. c. 19. (as was afore intimated) did prohibit all Arch-Bishops and other persons to visit or vex any places which were exempt before the making that Act; but that the redress and Visitation thereof should be had by the King's Commissioners; which may be noted on this Point.

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The said Irish Act of Appeals, as it concerns the *Petitioner's* case, may be well explained by the *learning* of the Canon-Law, and by the *style and usage* of the Court of Chancery at Rome in cases of Appeal; for this Act allows and directs such Appeals to be made to the Chief Governor of Ireland in such cases in which Appeals were usually made to the Court or Bishop of Rome, or to the See Apostolick; and in these cases upon such Appeals the Lord Chancellor of this Kingdom is required to grant a *Delegacy* or Commission of Delegates to hear and determine those Appeals: By which words in this Act it is implied, that there were some *unwonted* cases in which Appeals, made to Rome, were not *admissible of course*; and likewise that Commissions of Appeals in those *unwonted* cases were not *grantable* without difficulty, or without a *special mandate* of the Pope himself. And thus the Makers of this Act at the same time, by the Stat. of Faculties in cap. 19. fol. 112 & 121. Enacted that the Subjects of Ireland, in any necessary cause might sue to the King's Ecclesiastical Commissioners, and upon their refusal, to the Lord Chancellor of this Kingdom for any manner of Dispensation, Faculty or *Delegacy*, which *heretofore* had been accustomed to be had at the See of Rome; and in such *wonted* case the *Delegacy* shall be granted without difficulty: but in *causes unwonted*, and not accustomed to be had or obtained at the Court of Rome, such *Delegacy* shall not be granted or pass without the King's Licence by his Bill assigned: By the authorities of the Canon-Law, before quoted in this Argument, it is evident That Appeals, like those made by the Petitioner (*viz.* from definitive Sentences of Ecclesiastical Commissioners in Causes of ordinary cognizance and in the first instance, and which were not prohibited by their Commission or by any Law) were commonly admitted as of course in the Chancery of Rome; and thereupon a Commission of Delegates was likewise granted or *impetrated* without speaking to the Pope for it. *Durandus* afore often cited (*famous* for his knowledge and practice in the Canon-Law, and an Author to whom the English Judges in their Reports and Resolutions in Ecclesiastical cases give great credit) is in this Case.

Case of the chiefest authority; for, as he says in his *Speculum*; l. 2. p. 850. n. 4, & 6, he was one of the Pope's *Auditors* and Regents of Chancery in Rome, to examine Appeals brought thither from the whole Christian World; Dom. Clemens Papa III. *nobis Auditoribus servari praecepit, & sic servamus; in causis totius orbis illuc per appellationem delatis*, This Author, in his excellent *Treatise of Appeals*, declares fully in this case upon the Rules of the Law and the forms of *Appealing*, from Papal Delegates to the Apostolick See, and of *petitioning* the Pope's Lord Chancellor for Commissions of Appeals; Upon an Appeal, saith he, made from *diffinitive Sentences*, there needs no labour or much deliberating whether it ought to be admitted and committed to Delegates or not: for the Law it self give it of course to the Subject, if the Appeal was interposed within the *fatal term*, and if the clause *app. rem.* was omitted in the Rescript of the Papal Commissioners who gave those *Sentences*, and if the principal cause was not *heretical*, nor instituted in the *third instance*, and if no Law had expressly prohibited the Appeal; in this case any Officer of the Court, upon sight of the Appeal, might dispatch the Appellant; for the Chancellor himself could not take cognizance of the Justice, but only of the legality of the Appeal: *Ad ejus Officium, ad quem appellatur, spectat appellationem sibi oblatam recipere, & videre an fuerit infra decem dies appellatum: si à sententiâ diffinitivâ fuerit appellatum, non habet laborare inquirendo an ex causâ fuerit appellatum; nam à diffinitivâ etiam sine causa appellatione appellari potest: Si à diffinitivâ à quocunq; prolata appellatur, super appellatione Litera impetrentur; Id. Durand. Spec. l. 2. p. 856. n. 1, 2, 15. Quando appellatur à sententiâ semper est admittenda appellatio, qualiscunq; sit, etiamsi sine causa interponatur: Appellatur à sententiâ Delegati, cui est causa commissa sine remotione appellationis; secus est, si sit causa app. rem. commissa: Ibid. p. 813. n. 1, 2. Si sit Delegatus, cui causa est app. rem. commissa, non tenetur Judex deferre; gravatus tamen poterit nihilominus appellare; & si superior reputaverit appellantem gravatum, poterit removere gravamen; Id. p. 855. n. 5. Cum cognoscere, utrum appellatio sit recipienda vel non, spectet ad Judicem appellationis, potest certum*

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certum esse eam non esse recipiendam, non per causæ cognitionem sed per evidentiam facti, super quo iudicatum est; vel quia ibi prohibetur appellari à jure, vel quia causam in appellatione non ante sententiam assignavit; *Ibid.* n. 9. In *Literis*, quæ super appellationibus impetrantur, in narrationibus verba consueva nullatenus omittantur; Caveant autem *Officiales Curia*; *Id.* p. 863. n. 41, 43. Pope *Alex.* the 3d made a Decretal, which is canonized or included in the Body of the Canon-Law, saying, *Appellatio non debet admitti, postquam causa est Judicibus app. rem. commissa*; *Extra. l. 1. tit. 3. c. 1.* Pope *Sextus* the 4th and *Innocent* the 8th regulating the Apostolick Chancery, by their Constitutions and Rules concerning Appeals and the Power of the Vice-Chancellor and Regents of that Court, ordained that none should appeal, nor his Appeal be admitted, nor a Commission of Appeal should be granted, unless the Appeal be from a definitive Sentence, or from an interlocutory which had the force of a definitive, or from a grievance which could not be redressed by a definitive, otherwise the Appeal, Admission and Commission out of these cases were declared void; *Statuit & ordinavit quod nulli ante diffinitivam sententiam liceat appellare; nec appellatio, si fuerit emissa, debet admitti, nisi si interlocutoria quæ vim habeat diffinitivæ, vel à gravamine minime concernente negotium Principale quod non possit per appellationem à diffinitivâ sententiâ reparari: nullæq; causæ appellationum hujusmodi committantur, nisi in Commissione exprimatür quod interlocutoria vim diffinitivæ habeat vel gravamen ac tale quod in appellatione à diffinitivâ non valeat reparari: alioquin appellationes & Commissiones in posterum, & quicquid inde secutum fuerit, sint nullius roboris vel momenti*; which Rules were published in the Chancery of Rome A.D. 1472 & 1484, and recited in *Decis. Rotæ.* fol. 264 & 274. *De appell.* & *Ibid.* fol. 265 & 275 *De potestate Vice-Cancellarii & Cancellariam Apostolicam Regentis.* As an Appeal made from a definitive is due by Justice, so it is the just right of the Subject to demand and obtain a Commission of Delegates in the Apostolick Chancery upon his Appeal there presented before the Pope's Chancellor or his proper Officers of that Court for admitting wonted Appeals, and for granting thereupon

thereupon *Delegacies* without any *special Warrant* from the Pope; *Commissiones causarum & Rescripta de Justitiâ* quilibet impetret absq; speciali mandato ex Romana Curia stylo, ut quotidie videmus; Vantius De Nullit. p. 242. n. 87. & p. 483. n. 75. *Commissiones de Justitiâ Cancellaria* concedit sine speciali Papa commissione; Rebuff. in Pract. Cancellar. Apostol. p. 559, 563, 631, 636. Ad Papam vel ad ejus Legatum appellari potest omisso medio per summam Doctrinalis Collectam ex formis antiquis Cancellaria; Ibid. p. 636. Omnes causæ, quæ sunt de Justitiâ possunt committi per Cancellarium; sed signatura contra jus non est concessa Vice-Cancellario; Id. p. 647.

Since the said Irish Statute 28 H. 8. c. 6 seems to refer the admittance or disallowance of Appeals made to the King or Chief Governor of this Kingdom in the High Court of Chancery at Dublin, to the Practice and course of appealing to the Court and Chancery at Rome; It may appear further, by the Decisions of the learned Judges in that Court, in the like cases, that the Petitioner's Appeals are within the said Statute. The Judges in the Apostolick Chancery, the Rota and Court of Appeals in Rome often resolved, That Appeals from definitives to the Pope, or to his Chancery or Audience, or to the See Apostolick must be presented to his Chancellor, his Deputy, or to other proper Officers in that Court for a Commission to be signed by him or them; and that this Commission, being due by Justice and not by Grace, was grantable to the Appellant by course of Justice, even before the Judge a quo had given Apostles, yea tho' he had denied them; and if that Judge gave his Sentences in partibus or out of Rome, he was immediately inhibited upon the impetration of the Commission; and whatever he did in the cause directly or incidensly after the Appeal, was an *Attentate*; that this Judge ought to deliver to the Appellant Apostles, whether he deferr'd to the Appeal or not: *Practica introducendi causas in Curia Romana; si causa est in Curia per appellationem, tunc appellans introducat eam in Vice Cancellaria; Rota in Antiq. Decis. 786. Appellans nedum vadat vel iter arripiat versus Cancellariam, sed etiam ad ipsum Cancellarium vel ejus locum tenentem accedat, si poterit; alioquin de hoc protestetur & præsentes*

praesentet Commissionem signandam & recipiat super hoc publicum instrumentum ; quod si infra terminum praefixum signata vel praesentata non fuerit, non sibi nocebit ; quia per se non stat ; Ibid. Decis. 538. Cum causa est in Curia tractanda non sufficiat appellanti protestari in Porta Palatii vel coram Auditore contradictarum ; sed debet impetrare in Cancellaria, ubi dantur Judice, qui dantur in Curia. Ibid. Decis. 539. & Rotae Decis. 17 & 20 De appell. per Barn. de Bisgneto recollect. Ante dationem Apostolorum si appellatur à diffinitiva potest impetrari Commissio ; Rotae in Antiq. Decis. 214, 564, 734. Item in Novis Decis. 357, 366. Quamvis jus deferat appellationi interposita à diffinitiva, tamen Apostoli per appellationem peti debent, quos Judex à quo det Reverentiales ; Apostoli sunt pars et de substantia appellationis ; per quemcunq; appellantem petentur, alias appellans appellationi suae videtur renunciasse, imò reputabitur non appellans ; Et Judex siue appellationem recipiat siue non, semper Apostolos tradere tenetur ; Rotae in Nov. Decis. 366. Appellanti post decem dies à sententia lata dari debent Apostoli Refutatorii ; In Antiq. Decis. 824. Non tenet appellatio à gravamine vel nullitate nisi gravamen vel nullitas specificetur in appellatione, Ibid. Decis. 769. Non valet Commissio si impetretur pendente termino ad dandos Apostolos, quando appellatum est à gravamine, Ibid. Decis. 734. The Lords Commissioners of Appeals in the said Court of Rota have distinguished Appeals and the power of the Delegacy upon the grant of it ; for the Delegates, upon their accepting the Commission of Appeal, may presently inhibit the Judge a quo, if the Appeal was interposed from a definitive Sentence, and if that Sentence was not given upon a notorious crime, nor in case the Criminal had judicially confessed the crime, nor in other cases where the Appeal had only a devolutive effect ; in which cases the Delegates may not issue their Inhibition to the former Judge, until they have examined the Appeal, and found it lawful ; Auditores inhibent Judicibus statim post praesentatam Commissionem, si appellatum est à sententia diffinitiva, nisi in casibus in quibus appellatio inhibetur : tunc non potest Judex appellationis inhibere priori Judici, ne sententiam suam exequatur, nisi postquam cognoscere capit an appellatio sit recipienda vel non, & utrum sit casus in quo poterit appellare ; ita tenet

tenet & facit Rota circa doctrinam inhibitionis faciendæ in causis prædictis; Rota in Antiq. Decis. 762. The Lords of the Rota likewise have resolved and practised in their Court of Appeal That an Appeal made to the Pope had three effects very beneficial to the Appellant; First, By it the appellatory cause and the principal and accessory matter is brought to the supreme Court; 2ly, By it the Appellate is cited to that Court; 3ly, The Appellant may prosecute in that Court not only his Appeal, but also the nullity of that Sentence from which he had appealed; Rota in Novis Decis. 361. Per appellationem legitimans nedum negotium principale, sed omnia accessoria sunt ad eandem Apostolicam delata; et ideo cassantur omnia post hujusmodi appellationem per Judicem à quo attentata et facta; Ibid. Decis. 363. And those Judges also resolved, that this Appeal being once presented in the Pope's Chancery for a Commission of Delegates, preserves the Appeal from desertion; if it appears that the Appellant used his diligence to prosecute his Appeal, by repeating his Petitions to the Lord Chancellor for a Commission of Appeal; seeing it was not the fault of the Appellant that the Appeal had not been heard and determined; *Fait conclusum secundum omnes Dominos, quod appellanti legitime impedito tempora Juris vel hominis non currant*; Ibid. Decis. 360.

This Resolution of those Judges declaring, that such Appeals were not deserted, is very considerable in the Petitioner's case; for it is a convenient reproof of his Adversaries and their unlearned notion, surmising that he has lapsed his time for prosecuting his Appeals, and therefore it is now too late to get a Commission of Delegates, notwithstanding his diligence and incessant endeavors in all lawful ways to obtain one; This notion is a contradiction to the aforesaid Resolution, and also to the express Texts of the Civil and Canon Law, and contrary to the judgment of ancient and modern Lawyers, and likewise repugnant to the known Rule of natural Justice, which says, *Imputari non debet ei per quem non stat, si non faciat quod per eum fuerat faciendum*; Sext. Jur. Reg. 41. *Si stat per Judicem non currunt fatalia: si stat per Principem, non currunt tempora appellationis, donec Princeps constituat quis cognoscat: Lis quæ*

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It may be further observed upon the said Irish Act of Appeals, that the appealing to the Bishop of Rome, or to the See Apostolick, or to the Pope's Audience, or Chancery, or to the Court of Rome, in all wonted Cases, is as to say, the appealing to some certain publick Office and person where the Law or the Pope had placed that Papal Political Power of receiving the complaints of the Subjects, and dispensing for them ready, fit, ordinary and legal remedies: Those Appeals were not to be made and directed to the person of the Pope; such a method of appealing had been extraordinary, and perhaps no remedy at all: His Holiness might be as humourfom in slighting the

Appeals, as his Judge *à quo* was in denying the *Apostles*, tho' both Appeals and *Apostles* were Canonical, just and necessary; but the Law had provided an Appeal from the One, and none from the other: Those wonted lawful Appeals were made to the Pope as he was always virtually present in his Court of Chancery, not in that part of it which is *Judicatura* but as *Officina Justitiæ*; as it is a Repository of the right of the people, and also a dispensatory of all remedies for them. Thus the said Act says, Appeals, Provocations, and other Process, viz. Querels of Nullity, were had to or from the Bishop of Rome in these wonted Cases; that is, sometimes those Appeals and Querels made to the Pope were heard and determined in the Court of *Rota* in Rome, and sometimes they were sent with the Commission from Rome to remote parts to be heard by new Delegates where the principal Causes were instituted; in which case there are infinite precedents of Appeals in the *Decretals*; and the general Rule requires it; *Causa appellationis ad Romanam Curiam interposita regulariter non devolvitur, sed cognitio est in partibus committenda*; Vant. de Nullitat. p. 157. n. 66. But this Act cannot be so construed, that in those cases where Appeals were made to the person of the Pope, they may be made to the Lord Lieutenant of Ireland and to the Court of Chancery here; but the Act says that all Appeals lie to the Lord Lieutenant and Chancery of this Kingdom in all cases in which Appeals were wont to be made to the Bishop of Rome: and concerning such Appeals, the Pope or Bishop of Rome, the Court of Rome, the Pope's Chancery or Audience and the See Apostolick, are words different in expression, but in sense are the same; *Quando causæ ad Cancellariam Apostolicam remittuntur, idem est ac si ipsi Principi relate sunt*; Vant. de Nullit. p. 188. *Propter causam provocandi ad Romanam Ecclesiam venientibus intelligatur ad sedem Apostolicam provocatum*; Extra. l. 2. tit. 28. c. 52. *Itineris acceptio ad Papam, Curiam vel sedem Apostolicam habet vim appellandi*; Ibid. *Ne quis apud sedem Apostolicam litteras nostras nisi à nobis vel de manibus illorum recipiat, qui de mandato nostro ad illud sunt officium deputati; nuncium ad Cancellariam nostram vel ad nos ipsos mittat idoneum, per quem litteras Apostolicas*

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licae recipiat, Extra. l. 5. tit. 20. c. 4. Si quis ad nostram audientiam appellaverit, tu ei diem, infra quem Apostolicam sedem convenire possis adire, assignet; prout P. Alex. 3. in Extra. de app. c. 4. Introdotta dicitur appellatio quando est in auditorio Principis intimata, puta Vice-Cancellario, qui in hoc tenet auditorium Papa; Lancell. De Attent. p. 177. n. 6. Remissio causa ad Cancellariam non debet esse minoris efficaciam quam relatio causa ad Principem facta. Id. p. 386. n. 14. And thus in Appeals brought to her Majesty's Courts of Delegates in England and Ireland to be heard and determined; the form of the Appeals and Commissions is, That the party had appealed the Queen's Supreme Chancery and to her Majesty, or to the Queen in her Court of Chancery: Ad Nos & ad nostram Curiam Cancellariam, or ad Curiam nostram Cancellariam & ad Nos in dicta Curia Cancellaria appellavit; Clark's Prax. tit. 234, 266 & 293; and the like Style is found in the said Commissions. It is a ruled case in the Rota, that an Appeal made to the Pope, upon his death, devolves to his Successor; which is an evidence that the Appeal was not thought to be made to the person of the Pope; but that it was the intention of the Appellant to have an ordinary recourse to the Superior Officer of Justice; Qui appellat ad Papam, eo mortuo, potest proseguire appellationem suam coram successore; appellatio in hoc casu devolvit causam ad successorem; & appellans videtur potius concernere sedem Apostolicam quam certam Papae personam; Rota in Antiq. Decis. 364. & De Bisgu. de appel. Decis. 13. It was impossible that the Pope in person or his Lord Chancellor could receive and peruse all the Appeals of Christendom made to the Pope, and thereupon to hear those Appeals, or to grant extraordinary Commissions to others to determine them; but as afore hath been shewn, there were proper Officers appointed in those cases, such as the Pope's Auditors or Masters of Chancery to examine those Appeals, and thereupon to report to the Lord Chancellor or the Vice-Chancellor the allowance or rejection of them; Auditores Generales Dom. Papa ex generali sua Commissione possunt causas appellationum totius mundi audire, Durand. Spec. l. 1. p. 10. n. 9. & l. 4. p. 69. n. 6. This Author says, the usage and style of the

the Court of Rome (which is the *Common-Law* of the Church) ought to be followed by all inferior Courts, *Id. l. 2. p. 858. n. 14*; and since the Reformation of the Ecclesiastical Laws in England it was the *practice* of the High Court of Chancery there that some *special Master* of Chancery should examine the Appeal made to the King & his Court of Chancery, and also the form of the Commission prepared to be granted by the Lord Chancellor upon those Appeals; and that upon the Master's Certificate and Subscription, allowing the Appeals, the Appellant's Proctor was to impetrate the Commission; *prout Clark's Prax. tit. 266.*

The Irish Act of Appeals is not *all the Warrant* which the Lord Chancellor of Ireland has for admitting Appeals and for granting Commissions of Delegates upon those Appeals: of all the numerous Commissions of Appeal lying on record in the Registry of the Court of Delegates in Dublin, there are only one or two of them which were formed according to the letter of the said Act; but they were granted and issued out of the High Court of Chancery in this Kingdom according to the *Common-Law*; Those Commissions expressly declared that they were granted in *complementum Juris*, or *pro oportuno Justitiæ remedio*, & *mediante Justitiâ*, and they issued upon Appeals as made to her present Majesty or her Predecessors in the said Court of Chancery, without any direction in the Appeals to the Lords Justices, Lord Deputy or Lord Lieutenant of Ireland; without the assent of the Lords Chief Justices of B. R. and C. B. the Master of the Rolls, and the Under-Treasurer of this Kingdom, or any of them, and without any Bill assigned, or special order of any King or Queen, or Chief Governor of this Kingdom, authorizing the Lord Chancellor or Keepers of the Great Seal to grant and issue those Commissions of Appeal. Many of the said Appeals from Bishops of Ireland were made immediately to the King in his said High Court of Chancery of this Kingdom; and Commissions were thereupon granted without difficulty, and those Appeals and Commissions might lie and pass within the equity of the said Act, as it is declaratory of the *Common-Law*. An Appeal made

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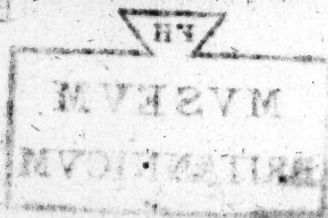
made to the Supreme Prince, *which ought to be directed to his Vicegerent or Lieutenant*, is no hurtful mistake: even by the Civil-Law, but is allowable by the Canon-Law; *Si appelletur ad majorem quam debuerit, talis error appellanti non abest; sed appellans remittitur ad eum ad quem debuit appellasse; Potest autem ad Papam omiffis mediis appellari; Durand. l. 2. p. 841: n. 14. Marant. Spec. p. 376. n. 369.* In this matter concerning Delegates, the Canonists do distinguish, saying, That if the Lieutenant or Deputy of the Pope or of a Supreme Prince commits to Delegates all manner of Ecclesiastical Causes and Jurisdiction, the Appeal lies from those Delegates to the Prince or first Delegate; but if the *whole Jurisdiction is not delegated*, the Appeal is to be made to the 2d Delegate, or Lieutenant: *Decretum 2. q. 6. c. 1. in glos. Ad quem sit appellandum; & Extra. l. 1. tit. 29. c. 27. Sect. 5: Item. Durand: & Marant. ibi ut supra. Quando Delegatus Papæ sublegavit totam Jurisdictionem appellatur ad Papam; sed qui sibi aliquid Jurisdictionis reservavit, semper à Subdelegato ad Delegantem appellari debet, etiam post sententiam; Sext. l. 1. tit. 14. c. 3, 7.* Therefore according to the common-law of the Church, as an Appeal lies from the Irish Bishops to the Queen in her Court of Chancery; because all manner of Jurisdiction of Ecclesiastical Causes within their respective Dioceses is committed to them, upon the Commissions granted to them by the Queen or her Lieutenant or Deputy of Ireland by vertue of the Irish Act. 2 Eliz. c. 4. as afore-mentioned: So the Petitioner's Appeal lies regularly, as it is now directed to the Lord Lieutenant of Ireland from the said Lisburn Commissioners; not only according to the equity, but also according to the letter and form of the said Irish Act; because the said Lisburn Commission was granted to them by warrant of the Lords Justices or Deputies of this Kingdom, and only ordinary Jurisdiction was committed to the said Commissioners, and only in some necessary causes, and only over some persons within the Dioceses of Down and Connor; and those Delegates were authorized to delegate the said Delegates or Commissioners by the Law or the Statute 2 Eliz. c. 1. as this passage hath been related before.

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This Irish Statute of Appeals, being made in *affirmance* of the Common-Law, and as a *general provision for lack of Justice*, ought to be expounded largely and beneficially, and according to that Law; that no Subject of Ireland, being grieved in any cause or case, in *cause of Office*, or in *case of Delegates*, should be excluded from the *ordinary remedy* of an Appeal. The Judges have resolved that such a *remedial Statute* must be so *construed* that the party grieved may have relief by it *expressly or implicitly*, lest there be a failure of Justice, 2 *Inst.* 23, 55. that the sense and meaning of the Statute should be *stretched* beyond the *bare words* of it; even to other persons, places, times, estates and actions, *than* to those which were mentioned in that Statute; It must *extend* to cases and things not *in esse* when it was made; and be interpreted to *parallel cases* which lie within the *equity* of the Statute; it must be *expounded* according to the rules of Justice and *general reason*, and according to the *main intent* of the Makers of that Act; for the *life* of every such Statute is the *meaning* of it. *Hob.* 97, 98, 122, 299. *Co. Litt.* 36, 92, 381. 2. *Broun.* 198, 260. And if the Statute be against *reason and common right*, the Judges are to *controul* it, and declare it of *no force* in that case. *Hob.* 87. *Co. 8. Rep.* 118. And that those are a generation of *Vipers*, who contrary to Justice and Mercy *wrest and strain that sense out of a Text*, which was never in it, or put the worse sense on it; *Viperina est glossa, quæ corrodit textus viscera*, *Co. 12. Rep.* If any one should have *ask'd* the Makers of the said Act of Appeals, when they had put it into *frame*; Sirs, If the Subjects and Inhabitants of this Land shall be visited and grievously vex'd, Suspended, Sequestred, Interdicted, Deprived and Excommunicated by the Visitors and Ecclesiastical Commissioners of *K. H. 8th* or any of his Successors, do you intend that the Subjects in these cases may have the wonted and ordinary remedy of an Appeal from those Visitors and Commissioners; or that they may appeal only in those cases where Appeals formerly were made from Regal Visitors and Commissioners to the Pope or See Apostolick; Certainly their answer would be, That their meaning was, that



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that the Subjects, being grieved by those Regal Commissioners and Visitors, may of course appeal from them as from the Visitors or Commissaries of the Arch-Bishops of Ireland; that the parity of reason and equity was the same in both cases; that the Act did not respect persons but Justice; and that it expressly declared that the Subjects should not lack Justice, but should have plenary remedies; and the afore-mentioned question was absurd; for since there had been no Regal Ecclesiastical Commissioners or Visitors, there could be no wonted Appeals from them.

Acts of Appeals, Commissions of Appeals, and indeed Appeals themselves require a favourable and benign interpretation in behalf of an Appellant: that the vox appellationis, the cry of the Innocent and oppressed, may be heard and redressed, lest otherwise that cry may ascend and pierce Heaven to bring down Judgment upon the Land for lack of Justice here. The Law presumes more for the Appeal than for the Sentence, as before hath been said and proved; and it is better that many guilty persons should escape scot free, than that one innocent man should be punished; therefore those Acts, Commissions and Appeals, being natural defences against grievances, ought not to be construed strictly against the Appellant, nor operate against him upon some subtilties and niceties of the Law; In appellationibus potius attenditur mens quam verba. Durand. Spec. l. 2. p. 849. n. 30. Cum de bonâ fide agitur, de apicibus Juris non est disputandum; stricta ratio quandoque omitti solet; subtilitates in causis Ecclesiasticis sunt reprobandæ, quia ad perniciem revertuntur; Extra. l. 2. tit. 1. c. 6. glos. a. In Ecclesiasticis personis & negotiis rigor & districtio Juris non requiritur; Ibid. tit. 14. c. 1. Judex appellationis quantum potest, obviare debet perniciosæ subtilitati Juris; Socin. De Sext. Excom. f. 286. n. 179. It is recorded in the second part of the Canon-Law, That Pope Alexander the 3^d granted a Commission of Appeal for a Clergyman, who being teased by his Bishop, told his Lordship, that he subjected himself and his Church to the Pope; and thence he hastned to Rome; but the Bishop slighting the Parson's saying and doing as no Appeal, Excommunicated him; but the

the Pope having notice thereof, signified in his Commission to his Delegate, that the Clergy-man's said *aēt* had the substance, tho' it wanted the form of an Appeal; and therefore directed the Judge of the Appeal to allow that *aēt* as a lawful Appeal, and to declare that what-ever sentence or meddling the Bp. should make against the man after his journeying towards Rome, was an *attentate* and nullity; *Cum Presbyter G. à suo Episcopo multipliciter molestatus, licet et simplicitate forte verbum appellationis non expresse, tamen postquam se et sua nostra protectioni subjecerat, non debuit sine causa cognitione aliquā sententiā condemnari: Mandamus quatenus (si itā tibi constiterit) sententiam, quam præfatus Episcopus in eundem Presbyterum tulit, denuncies non tenere; Extra. De app. c. 34.* And thus Pope Innocent the 3^d appointed the Arch-Bishops of Armagh and Cashel, as his Delegates, to hear the Appeal of one D. an Elected Bishop of Ross, whom former Papal Commissioners had sentenced; the Pope allowed a Commission upon the Appeal, altho' the said D. was decreed by those Commissioners *contumax* after three citations, and he had interposed no formal Appeal from them; yet upon their proceedings against him he hastened from them to the Apostolick See; and this his speedy journey was taken as an Appeal; *Ad nos, etsi non verbo, facto tamen intelligitur provocasse, arrepto itinere ad sedem Apostolicam veniendi; Extra. l. 2. tit. 14. c. 7.* There is an express Text in the Canon-Law and an adjudged case, shewing, That when a Clergy-man is prosecuted by his Bishop, or in his Consistory, and finds himself aggrieved, and hasteneth thence to the Pope or his Court for protection, and there interposeth within ten days an Appeal from that Bishop, and gives intimation of it to him, his journey is *ipso facto* an Appeal, and he shall have the benefit and suspensive effect of it as of a Canonical Appeal; and the Excommunication or other Sentence of the Bishop, given afterwards against him, shall have no force in Law; *Qui contra superiorem suum quis itinerat ad Papam, habetur pro appellante, itā quod excommunicatio postea in eum lata non tenet; Extra. De app. c. 52.* Therefore in the Petitioner's case, the pretended Sentences of Excommunication, Suspension, and Sequestration given

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given against him by the said *Lisburn Commissioners*, after his Appeal from them, were certainly null acts; Especially since one Appeal being interposed from one sentence or grievous Act of Delegates, suspends their Jurisdiction over the Appellant in all other causes; for by their one grievance they are to be suspected as his enemies in every thing; this is the Judgment of the Canonists, and the Resolution of the *Rota* in the like case: *Si appellatur à Delegato ab uno gravamine suspenditur ejus Jurisdictio quoad omnia, secus est in Ordinario; Rota In Antiq. Decis. 163. Lancell. De Attent. p. 223. n. 32, 33. Innoc. fol. 231.*

It cannot fairly be argued against the Petitioner out of the said Irish Act of Appeals, or by any other Law, that the Lord Chancellor of Ireland may not grant to him a Commission of Delegates upon his Appeal; because this is now directed to the Lord Lieutenant of Ireland, which formerly was directed to the late King *William* in his High Court of Chancery in England & Ireland; as if the Petitioner had so made his option in appealing, that he may not be allowed to wave or vary from it: But this appellatory Cause hath not been heard, and the choice was not determined in effect; and the Petitioner's former Appeal had in it the clause & protestation (lawful & usual in all such Appeals) viz. that the Appellant may at any fit time or place afterwards add to, and take from his Appeal, and alter it into any better form for his advantage: His first and this additional Appeal were both the same in substance; they were not two or several actions, but only different forms of one common remedy, which doth not exact a strict method or nice modification; *Possum quibuscunque modis possum appellationem meam defendere*; as aforesaid: and the Canonists, speaking further in behalf of Appellants in the like case, say *Appellans geminando vel multiplicando appellationes non videtur ratificare factum Judicis à quo appellatur, vel appellationi renunciare; sed potius videtur suum desiderium augmentare, ut ab ejus Jurisdictione recedat; Innoc. fol. 141. Clem. l. 2. tit. 4. glos. g.* The substance of an Appeal from a diffinitive generally does not require a direction in it to a certain Superior Judge or Court: all the words in such Appeal, which are necessary, are *Appello ab hac iniquâ sententiâ*:

Digest. de app. lex. 2: Si quis appellat coram Judice, sufficit si dicat, appello; sed si appellat sine Judice vel à gravamine, tunc scribet quis, & à quo, & contra quem, & à quâ sententiâ; 2. q. 6. c. 31. glos. d. The Canon-Law gives the Appellant his choice; he may bring his Appeal to the immediate Superior Judge, or to the Supreme Ordinary *omisso medio*, excepting in one case afore-intimated, *viz.* when the Pope's special Delegate, in his committing Ecclesiastical causes to others, reserves somewhat of the Jurisdiction to himself; *De jure canonico semper potest appellari à quocunque Judice ad Papam omisso medio; uno casu excepto, sc. quando Delegatus Papa causam sublegat aliquid sibi reservando; quia tunc à sententiâ sublegati non potest appellari ad Papam, sed debet appellari ad Delegantem; secus si non opponitur; tunc tenet appellatio; Marant. Spec. p. 376. n. 369, 370.* And this was likewise a Law at the Reformation of the ancient Canons; *Delegatus majestatis nostræ non potest subdelegare, adjiciendo hanc clausulam appellatione remota, licet ipse cum eâ fuerit Delegatus; Reform. Leg. Eccles. p. 192.* which Rules and exception perhaps was the only legal reason why the Petitioner could not obtain a Commission of Delegates upon his former Appeals: for if the said *Lisburn-Commissioners* were specially authorised by his late Majesty's Deputies of this Provincial Government, and if those Commissioners were empowered to take cognizance only of enormities within the Dioceses of Down and Connor, as hath been set forth; the Petitioner was mistaken in appealing to his said Majesty in his Chancery of England and Ireland; his Appeal then ought to have been, as it is now directed to the Chief Governor of this Kingdom; but this mistake can be no prejudicial error; the Petitioner ought to be restored to his *fatals*, and to the prosecution of his Appeal, according to the form of the said Irish Act, and the Canon-Law, altho' he had not interposed his said *Additional Appeal*: But if the said *Lisburn-Commission* was General, the Petitioner, according to the *Common-Law* of the Church and Kingdom, had his option of appealing to the said King or to the Chief Governor in the High Court of Chancery; as hath been said before, and may be further proved by the Lords in the *Rota*, and

and by other eminent Ecclesiastical Judges ; *Rota in Nov. Decis.* 350. *Extra. de app. c.* 25. *Sext. de app. c.* 1. *glos. b, c.* *Durand. Spec. de Appel. p.* 840. *n.* 7, 14, 16, 18. And there is a full decision upon this point in the said Court of Delegates or *Rota in Rome* ; *Appellatio alternativa sc. ad Papam, vel ad Archiepiscopum vel ad Episcopum in partibus interposita valet & tenet; nec est necesse quod infra decem dies fiat electio vel certificatio; quia cum appellans appellationem suam prosequitur, eo ipso elegit, & per citationem postea subsecutum adversarium certificat; Rota in Nov. Decis.* 209. In these Appeals there is this a distinction ; no Appeal lies to any Bishop or Arch-Bishop from Papal Delegates ; but generally any Appeal may be made from Episcopal Commissaries to the Pope. The Kingdoms of *Ireland* and *Sicily* in this respect are alike ; no Appeal lies from their *Vice-Roys* to the Pope ; and generally Appeals lie to the King's High Court of Chancery from any Bishops and other Ecclesiastical Judge within the Kingdom ; even from the *Vicar-General* of the Vice-Roy ; because there is no Superior within the Realm to whom the Appeal may be made ; Besides regularly Appeals made from Delegates must be made to the *Delegant*, and not to any other Superior ; but if the Delegates be particular and appointed, as the Surrogates of Bishops and Arch-Bishops, to exercise all ordinary Jurisdiction in special causes within in a certain *Precinct* of the Diocese, the party grieved by them may appeal indistinctly at his own choice to the first or second *Delegant* ; as in the like case Appeals lie from those Surrogates to the Bishops or to their Chancellors : These are the *Resolutions* of an excellent Judge in *Sicily*, viz. the aforementioned *Miranta* in his *Speculum De app. n.* 377, 383, 385, 286, and 398. And in those *Resolutions* he often declares that Appeals lie from the Commissioner or Delegate of the Prince ; and that all Laws which do forbid Appeals are odious, because they are made against the Rules of the *Common-Law*, allowing Appeals regularly in all causes and from all Judges who are not *Supreme* in their Government : *Omnes leges, quæ prohibent appellationem sunt odiosæ, cum sint contra Regulas Juris communis ; quæ permittunt regulariter ob omni actu appellari : A quocunque.*

quocunque *Judice* in Regno potest appellari ad Regiam vel ad Mag-
nam Curiam Vicaria omisso medio: A Sententia Vicarii Principis
appellatur ad Principem, ex quo non reperitur alius superior: Ap-
pellatur ad Delegantem à sententia Delegati: Proditum est gra-
vato remedium generale per viam appellationis; cum etiam à De-
legato Principis sit permissum appellare; Id. ut supra: & p. 390.
n. 13. Wherefore as it is common to appeal from the censures
of the Bishop or other Ecclesiastical Judges to the Vice-Roy of
Sicily, and he receives the Appeals by his Chancellor; as the
Arch-Bishops and Legates à Latere do by their Vicar-General;
because this Vice-Roy is such a Chief Governor of the Realm,
as by the Pope's Bull and by the Statute of the Kingdom
is Supreme in all Causes Ecclesiastical and Civil, as afore hath
been said; so her Majesty's Lieutenant or Vicegerent of the
Kingdom of Ireland, by the Statute 2 Eliz. c. 1: may by his
warrant grant to Delegates all manner of Ecclesiastical Juris-
diction throughout this Kingdom; and therefore Appeals lie
from them to him.

There are other Statutes of force in this Kingdom (besides
the said Irish Act 28 H. 8. c. 6.) which may prove that the
Petitioner's Appeal is lawful, and ought to be admitted by the
Lord Chancellor of Ireland for a Commission of Delegates.
The Statute made at Clarendon 10 H. 2. c. 8. (recited in the
Hist. of Mat. Paris, p. 84. and in Binus's Councils Vol. 7. part. 2.
p. 652.) declared that it was an ancient Law and custom of the
Kingdom of England, that the Subjects for lack of Justice may
appeal from the Arch-Bishop to the King, and that upon the
King's Precept or Commission the Cause shall be ended in the
Arch-Bishop's Court, that is to say, before Delegates in the Ar-
ches; and it shall not proceed further without the King's
assent: *De appellationibus, si Emerferint, Ab Archidiacono debebit
procedi ad Episcopum, ab Episcopo ad Archiepiscopum; & si Archi-
episcopus defuerit in justitiâ exhibendâ, ad Dominum Regem per-
veniendum est, ut praecepto ipsius in Curia Archiepiscopi controversia
terminetur, ita quod non debeat ultra procedi absq; assensu Domini
Regis.* This Statute is of force in this Kingdom; partly by
the Irish Act 10 H. 7. c. 22. and partly as it is declaratory of
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the Common-Law, and therefore according to the aforementioned rules, for expounding such Statutes, this ought to be construed liberally for the benefit of the Appellant in case of lacking Justice; especially considering these further rules; *Ad ea, quæ frequentius accidunt, leges adaptantur*; Vaugh. Rep. 373. *Casus cmissus Juris communis dispositioni relinquitur: Statuta bene extenduntur de similibus ad similia, & in casibus in quibus eadem est ratio; & ad ea, sine quibus in statutis disposita non possint commodè sortiri effectum*; Lynn. p. 253. glos. b. The Court of Delegates, upon the King's Commission of Appeal, is not a new Court, as first erected in England or Ireland by the English Statute 25 H. 8. c. 19. or the Irish Act 28 H. 8. c. 6. The said English Statute directed, that for lack of Justice at or in the Court of any Arch-Bishop in England, or within the King's Dominions, or in exempt places, the party grieved may appeal to the King in his Court of Chancery, as Appeals were usually directed thither from the Admiral's Court for a Commission of Delegates; which expression in this Statute intimates, that this was a known course of appealing from the Admiral or the King's Commissioner in marine causes to the King in his Court of Chancery for a Commission of Delegates; who heard the Appeals in some Court of the Admiral. Thus Alan Watertoft 11th H. 4. conceiving himself aggrieved in the Admiral's Court, appealed to the King and his Audience or Court of Chancery, and thereupon he obtained a Commission of Delegates; *Ad nos & audientiam legitime appellavit, sicut per instrumentum in Cancellariâ nostrâ exhibitum plenè liquet, ut certos Judices sive Commissarios super appellatione sua prædicta assignare dignaremur*; prout Prin's Animadv. on 4 Inst. p. 403; This is and always was the practice of appealing in marine causes; No Pope ever took away this right in those causes from the Kings of England, or carried it to his Chancery at Rome; but in Ecclesiastical causes after the Reign of the said King H. 2^d, in the time of King John and afterwards, until the 24th of King H. 8th the Pope very often usurped this right of Ecclesiastical Appeals. A. D. 1179. a Clergy man in the Diocese of Chichester in England appealed from his Bishop to

the said King H. 2d in his Chancery or Audience; of which appealing Pope Alex. 3d complained in the General Council then held at Lateran in Rome, *Auctoritate sedis Apostolicæ contempta ad audientiam Domini Regis appellavit*; Bin. Concil. Vol. 7. part 2. p. 704. And tho' that Papal Usurpation was too general, yet during this encroachment of the King's power, some Kings (as Supreme Ordinaries in appointing Commissioners in Ecclesiastical causes, and in receiving in Chancery Appeals from those Commissioners, and in granting new Commissions for the hearing of those Appeals) asserted their Ecclesiastical Supremacy in those Causes and Appeals; as King H. 3d Commissioned in an Ecclesiastical Cause the then Arch-Bishop of Dublin; Cox's Hist. part 1. p. 124. And the same King collated to the Bishoprick of Down Reginald the Archdeacon of Down, and rejected the Election, which the Monks of the Cathedral of St. Patrick in Down had made for one Lidel to be their Bishop; prout Warai Coment. De Prasul. Hibn. p. 55. And there are many like instances on this point, *Id.* p. 18, 56, 69, 109. And in the Reign of the said King, viz. 25 H. 3. there was a Court of Delegates held in a decimal Cause, and a Prohibition awarded *Judicibus Delegatis*, 13 Rep. 13. And by the Common-Law the King of England might, and often did exempt Churches from the Jurisdiction of the Bishop and Arch-Bishop, to whom formerly those Churches and their Incumbents were Subject; and gave to those Incumbents Episcopal Jurisdiction; 1 H. 7. f. 23. & Co. 5. Rep. 14. in *Cowdrie's Case*. Some of these exemptions, in Royal Donatives and in the King's Free Chapels and Peculiars, were made before King H. 8th, King John or K. H. 2d; and some made during the Pope's said Usurpation: and those exempt places were visitable only by the King's Ecclesiastical Commissioners; and Appeals lay from those Visitors, not to any Bishop, but to the King in Chancery for a Commission of Delegates who heard those Ecclesiastical Appeals in some known Eccles. Court appointed for hearing Appeals; as that of the Arch-Bishops, viz. in his Court of Arches in Bow Church, Lond: as Dr. Wake says in his *Power of Princes*, p. 125. Anselm Arch-Bishop of Cant. in the time of King Rufus was the first Subject

ject of England who appealed to Rome, as the Lord Cook laid in 4 Inst. 341. And the Bishops and Barons told Anselm, It was a thing unheard of, and contrary to the custom of the Realm, for any one to appeal to Rome without the King's leave. King John, before he gave up the rights of his Crown to Pope Innoc. 3d, wrote to him saying, that his Subjects should not appeal to Rome, because they might have Justice and Judgment in all things at home; Mat. Paris Hist. p. 226. King H. 3d sent an angry Letter to the then Arch-Bishop of Dublin, saying *Rex agere tulit appell. ad Papam; Rex Dublin: Archiep. 4. Inst. 340.* Therefore seeing there were numerous and continual Appeals, made to the King, before Appeals were allow'd to the Pope, from Ecclesiastical Courts in exempt places, and from all the Courts of all Arch-Bishops in the King's Dominions, it cannot be imagined that those Appeals were usually directed and presented to the person of the King, but rather to him in *Officina Justitiae*, in that part of his Chancery where there was an Office ever open, and an Officer publickly known, and always ready to receive Appeals, as well from Ecclesiastical Courts as from the Admiral's Court; the reason being the same in both; but more cogent in the first, because errors and grievances in Spiritual Courts are more frequent and more mischievous, than in the Courts of Admiralty; and therefore the complaints of those ought to be more readily admitted, and also in a certain known Office for the redress thereof; otherwise the Subjects, perhaps being grieved by an unjust Excommunication given against them by an Ecclesiastical Judge, might find themselves at a loss where and how to wait for the King in person to present to him their Appeals for relief. Appeals and Writs of Error hold upon the same reason; The Subjects of these Kingdoms, the Clergy as well as the Laity, were in the like case and perplexity, as had in the Ecclesiastical as in the Temporal Courts, before they had obtained their *Magna Charta*, and that precious Chapter of it, *Nulli negabimus vel differemus Justitiam vel Remedium*; they were (as Lambard says in his *Archaion*) as uncertain of remedy as they were certainly wronged. The Kings indeed had always a Court of Chancery for the admission of Appeals

peals and plaints of errors against Judges, and this Court for that purpose is and was co equal with the Monarchy, *Hob. 63. & Shore p. 82.* The Saxon King *Ethelred* appointed the Office of Chancellor to be exercised by three Abbots by turns, *Dugd. Orig. Jurid. fol. 32.* The British Kings in England had such an Officer, *4 Inst. 78, 81. Cancellarii officium est supplicationes & querelas conquerentium audire & examinare, & eis super qualitatibus injuriarum ostensarum debitum remedium exhibere per Brevia Regis, Mirror. c. 1, 15. Fleta. l. 2. c. 12.* But in the Norman Reigns the Chancellor and Chancery followed the King; then the access of the Subjects to the person or presence of the King were very difficult and expensive for their obtaining Writs of Error or Commissions of Appeal, and they might be undone by his hearing & determining them by absolute Authority without prescribed rules of ordinary Proceeding, and his delaying of Justice would be as a denial of it: But that Great Charter and the Chapter aforesaid restored and secured to the Subjects their ancient rights, and especially this in this case of Appealing: for an Appeal is due to the Subject by right and justice, and is an ordinary remedy, as hath been before in this Argument often asserted and proved; and as it is an ordinary remedy, a common right and due *ex debito Justitia*, this Appeal ought not to be made and directed to the Person of the King, as to King *Henry the 2^d*, who died, and such an Appeal would die with him, but to the King, as he is an immortal Corporation, and ever present in his office of Justice in his Court of Chancery: A Commission of Appeal is granted in Chancery in *complementum Juris* and *Justitiâ postulante*, upon an *Ostensum est Nobis in Cancellaria nostra—Ex parte A. B. de oportuno Juris remedio sibi per nos provideri*—as afore-mentioned; which Appeal and Commission have very little difference in substance or form with the Plaint and Writ of Error, or of false Judgment directed to, and granted by the King in his Court of Chancery, *Fitz Herb. Nat. Brev. n. 18, 19, 21, 23, 24, 25.* And the King's solemn Promise in the said Magna Charta, of denying or delaying Justice or right to none of his Subjects, respected his Ecclesiastical as well as his Secular Subjects, and Appeals

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as well as Writs of Error: The Temporal Judges have resolved That a man may of course have a Writ of Right, or a Remedial Writ in the Court of Chancery without suing to the King for them; *Dyer* 104. *b.* Dr. and Student. *Dial.* 1. p. 35. Co. 2. *Inst.* 4. 53. The Lord Chief Justice *Hale* said, *An Appeal, made to the King in his Court of Chancery, is by vertue of his Original Jurisdiction; and he gives a Commission to others to hear the Appeal, because he could not bear it in person; 1 Ventr. Rep.* 134. *1. Mod. Rep.* 84. The King is a Body Politick; he can Judge no man in person, *12. Rep.* 64. He gives Judgment in matters of Justice by his Judges; and therefore the King himself can do no wrong; but if his Lord Chancellor or his other Judges give false or erroneous Judgment, or deny or delay Justice, the Subjects may have a legal remedy, and a common right against the wrong; *2. Inst.* 186, 187. The King indeed is Supreme in all causes, both Ecclesiastical and Temporal; but his Supremacy is Political, not natural or personal: he is Chief Justiciary as well as Supreme Ordinary; but the Law has distributed his whole power of Judicature to his Ministers of Justice, in Courts and Offices of Justice, so that if a man should render himself to the Judgment of the King in a Case, in which the King had committed all his Judicial Authority to others, such a render would be to no purpose, *4. Inst.* 70, 71. The Statute 52 H 3. c. 1. says *Provisum, concordatum & concessum est, quod tam majores quam minores habeant Justitiam in Curia Domini Regis.* The Statutes 2. Westm. 13 E. 1. c. 14 & 50, declare that no man should depart from the King's Court without remedy; *Non recedant querentes à Curia Regis sine remedio, nè Curia Regia deficeret in Justitiâ exhibendâ;* which Statutes are maxims of the Common-Law, that the Subject being injured shall have Justice, and be redressed in one Court or other; *Prin's Animadv.* p. 103. *When the party is grieved and comes into Chancery with his complaint, he shall have present remedy without pursuing it elsewhere; 36 E. 3. c. 9.* That is, he shall have a Commission of Appeal, or a Writ of Error, directed to certain Judges and Delegates to hear and determine the grievance, *4. Inst.* 82. *Lamb. Archaion.* p. 72. And

this Statute likewise, as well as *M. Charta* and the said Stat. of Glarenden, is declaratory of the Common-Law, 2 *Inst.* 54. 4 *Inst.* 82. When the Subject, upon his complaint in Chancery, can find no special form of a remedial Commission or Writ proper for his Case, the Lord Chancellor or his Officers shall frame a remedy for him in *casu consimili*; or in *novo casu novum remedium est apponendum, ne Curia Domini Regis deficiat conquereptibus in Justitiâ perquirenda*, 2 *West. c.* 1, 25: *Id.* Lamb. p. 62. and 2. *Inst.* 484. And the Statutes 25 *E.* 3. c. 4. and 28 *E.* 3. c. 31. and 37 *E.* 3. c. 18. and 38 *E.* 3. c. 9. and 42 *E.* 3. c. 3. and 17 *R.* 2. c. 6. and 15 *H.* 6. c. 4. provided and prohibited that no man should be put to answer before the King, or should prefer unto the King any suggestion or petition against other men; for this would be contrary to the ancient Law of the Land; *Id.* Lamb. p. 113. 114. 115. And as this learned Lawyer says in p. 116 and 117, The Common man of England hath ever been, and without doubt yet is, and ever will be impatient to have his causes determined by absolute Authority or unbounded Jurisdiction: whereupon the Commons have pressed in above 30 Parliaments, and have there obtained so many Statutes, Enacting, that the Great Charter in this Point should be wholly and inviolably observed; *Id.* Lambard. p. 112. Co. 4. *Inst.* 35. And this Charter principally provided for the Franchises and rights of Church men, that their liberties should be kept entire; their Benefices, upon Induction or Instalment, are their Free holds; and these Beneficers may not be deprived, nor suspended or sequestred, without just and true cause, and lawful procedure and legal sentence, as is declared by 14 *E.* 3. c. 3. which is an enrolled Statute; prout Cotton's *Abr.* p. 23. If the erroneous proceeding and sentence be made in the Temporal Court, a Writ of Error lies; If in the Ecclesiastical Court, an Appeal cannot be denied or delay'd: for certainly it is the right of a Church-man to appeal from an erroneous private Sentence. *A. D.* 1701 The English House of Commons in their 14th Article against the Lord Summers (the late Lord High Chancellor of Engl.) charged him with a Position, spoken by him in place of Judicature, viz. That particular Subjects might

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might have rights and interests without any remedy for the same, unless by Petition to the person of the King only; which Position, as they declared, was highly dangerous to the legal Constitution of the Realm, and absolutely destructive to the property of the Subject. In the 29th Eliz. the whole Court of B. R. in *Huddleston's Case* 4 Inst. 214, 215 resolved that a Writ of Error ought to be granted to Huddleston in Chancery without Suit or Petition for it to the person of the Queen; for if he be driven to his Petition, great delay might be used; and his life might end before he could obtain his Writ. That which is called in the Temporal Law a *Plaint* or *Writ of Error*, is an Appeal in the Spiritual Law, 27 H. 8. f. 15. b. they are remedials, and equally the rights of the Subject; in all cases not expressly prohibited; they are grounded upon the same reason and common Justice. The said Statute of Clarendon did not direct the party to appeal to the person of the King; for that method would have implied a *Supplication* to be made to his Majesty himself to hear and determine the Appeal; and this remedy might become more grievous than the disease; the delay of Justice may be worse to the Appellant than the denial, as in *Huddleston's Case* afore-mentioned. But this Statute, both in the Preface and in the conclusion of it, declares that, before any Popish or foreign Canon was introduced into the Realm, it was the old Law and the immemorial usage of the Kingdom, that the Subject, when he lacks Justice in Ecclesiastical Causes, might appeal or complain to the King for a *Precept* to Delegates to examine the complaint, and redress the grievance; This method of appealing is referr'd to the Common-Law. The afore-mentioned English Statute 25 H. 8. c. 19. shews that, upon Appeals made to the King in his Court of Chancery, the King is to nominate and appoint the Delegates, yet the Lord Chancellor, or Keeper, or the Commissioners of the Great Seal do always nominate and appoint those Delegates. The Entry of Commissions of Appeals, granted by the Lord Chancellor, is in the Chancery as committed *per ipsum Regem*; 2 Kebl. Rep. 47. The Lord Keeper writes *Teste me ipsa* in the name and person of the Queen herself; Lamb. Archæon. 63. The Lord Chancellor, in admitting Appeals,
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and in granting and issuing forth of Chancery Commissions upon those Appeals, is as the Queen's Deputy or Servant during her pleasure; Co. 9. Rep. 99. Dyer 212. yet he is, as a Judge, in that office and case, to examine whether the Appeal be lawful or not; which Appeal, as it is a right of the Subject, and due to him by Justice against the Appellate, ought not to be presented to the person of the Queen for the examination of its legality, as aforesaid; *Ipsamet Regina Eliz. non potest esse Capitalis Justitiar. in Banco Regis*; Dyer 175. 6. The King could not act as Judge in the Court of King's Bench, tho' the causes there are coram ipso Rege; 4. Inst. 71. The King alone, without the assistance of his Judges, cannot give Judgment, 2 R. 3. f. 10. He cannot determine any matter of difference between any of his Subjects; otherwise than in the ordinary Courts of Justice, and in the ordinary course of Law, Dyer 179. 16 Car. c. 10. *Non est Regis inquirere utrum sententia Judicis Eccles. sit justa vel injusta*; Lynw. p. 351. As no Appeal or Writ of Error lies from the King, 4. Inst. 343; So no legal ordinary Appeal or Writ of Error may be directed and presented to the person of the King. By the old Common-Law, when a party is grieved, in a cause of trespass, by an erroneous Judgment in the Hustings (the highest Court in London) he may come into Chancery for a Commission, directed to certain persons to examine the Error, and reverse that Judgment; and the form of the Commission is very like that in a Commission of Appeal in an Ecclesiastical cause of Office; The complaint is received by the Lord Chancellor, and he grants and issues the Commission out of Chancery in the King's Name, and in such a complement of right, which cannot justly be denied or delay'd to the party. *Rex dilectis—Ex parte B. de quadam transgressione accepimus—Nos volentes errorem illum (si quis fuerit) debito modo corrigi & part. inde in complementum Juris & ad plenam & celerem Justitiam faciendam assignamus*, Fitzb. N. B. n. 23. E. If a false Judgment be given for the King in any action, the party grieved may have a Writ of Error, and assign his Errors, without suing forth any Scite Facias against the King ad audiendum errores; because the King is always present in Court; Id. Fitzb. n. 21. H. And the said

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said Law and Lawyers do allow *suspensive Appeals* made from proceedings and Sentences in the Ecclesiastical Courts in causes *pro salute animæ & reformatione morum*; which, they say, are there the King's Suits; *Co. 4. Rep. 75. b. 5. Rep. 51. Moor 653. Cro. Eliz. 742. Cro. Jac. 335. 2. Bulstr. 182.* Wherefore upon the said Statutes of King *H. 2. H. 3d and H. 8th*, and upon the whole matter, it may plainly appear that the Petitioner's Appeals lay regularly, where they do, in her Majesties High Court of Chancery; especially seeing the said Appeals were so made for lack of Justice according to the equitable sense of those Statutes; because tho' the words of these Statutes were special, viz. Appealing for lack of Justice in or at the Courts of the Arch-Bishops, yet the reason being general, the Statutes ought to be generally understood; for the Petitioner was manifestly grieved by the said *Lisburn-Commissioners*, and no Court of any Arch-Bishop could admit his Appeal, or intermeddle with any Act of the said Commissioners, as will hereafter be proved; and tho' the said Statutes enumerated only some particulars, and the usual Appeals made to the King in Chancery, viz. Those from Arch-Bishops Courts and from exempt places, as aforesaid; yet these beneficial Statutes must extend to parallel cases, and be construed to all the Appeals which lie under the same reason and lack of Justice in appealing from Arch Bishops; and also to all the Appeals which the Common-Law had a disposition to allow, or the said Statutes had a good intention to relieve the party grieved, altho' they be out of the Letter, Form, or Order of those Statutes, *Dyer 240.* Especially since no Commission of Appeal issues out of Chancery *secundum formam Statuti in hac parte editi & provisi*; but the Commissions of Appeal, which are granted by the Lord Chancellor of Ireland, are made according to the Rules of the Common-Law, or upon the equity of Statutes, which are declaratory of that Law: and in this Case his Lordship doubtless will do, as a Lord Chancellor said in *8 E. 4. f. 5.* where Statutes do give a title of right unto a man, I am bound to obey it; and as another Lord Chancellor in *4 H. 7. 5* said, *Nullus recedat à Curia Cancellaria sine remedio.*

It may seem a repetition and unnecessary now to bring proofs of this point by the Canon and Common Law; seeing the Authorities and Statutes before set forth are declarations of that Law; and the ancient Common-Law is the same in the Church and State of England and Ireland, as was said in Co. 4. Inst. 350, 356, and in the excellent History of Ireland aforecited, Part 1. p. 24, 66: but this matter being of great moment and long contested, it may further be proved by the Common-Law, as it is common Reason and Justice.

In the Petitioner's case it cannot be too often said, That an Appeal is a natural defence; The nature of his Appeal does dictate the allowance of it, and bespeaks a Commission or hearing thereof: an Appeal is a provocation; and when a party is oppressed, the appeal is invoking the Head for relief; and the Head will naturally send succours to that member. The Act afore-repeated, declaring the rights of the Subject, says, All Commissions of nature like to the High Commissions (which was so unnatural as to prohibit all Appeals) were pernicious: for an appeal is allowable *suggerente humanitate*, 2. q. 6. c. 29. Nature and humanity, common reason and necessity of Justice do demand the hearing & determination of the Petitioner's Appeals; they were made from Commissioners erected under the Great-Seal, and must be heard by Commissioners appointed by the Great-Seal; and their Sentences must be dissolved the same way they were made; *Nihil tam conveniens est naturali equitati, quod unumquodque dissolvatur eodem ligamine quo colligatum est*, 4 Inst. 28, 122. No Court is exempt from this Rule of natural Justice, Shore's Cases p. 5. Those erroneous and grievous proceedings and decrees ought not to remain uncorrected and not reversed; and yet they cannot be undone, or declared null acts, nor can be examined in any Court except in a Court of the same sort: No Temporal Court can take cognizance and discuss the Appeals, whether they be just or unjust; much less the merits of the principal cause, and the proceedings thereupon; for these matters belong *ad aliud examen*; the Laws, Rules and Forms in the Ecclesiastical Courts are different from those in the Temporal Courts; *Jura sunt separata & limitata*, says Bracton, l. 2.

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c. 8. n. 9. *In Angliâ secundum Jura Regni remedium appellationis scire non pertinet ad Judicem Secularem*, *Lynn. 351.* If an Ecclesiastical Court had Jurisdiction of the Cause, the Acts and Sentences made in that Court in that cause, be they right or wrongful, must stand firm until they be revoked or declared null in an Eccles. Court, *Moor 783. 4. Rep. 29. 5. Rep. 5. in Gardrie's Case. 5. Rep. 57, 58. in Spicor's Case. 1 Mod. Rep. 83. 3. Mod. 285, 333. 2. Jones. 175. Raym. 105, 112. 2. Ventr. 42, 47. 1 Leonis, 164.* If the Secular Judges had granted to the Petitioner a Prohibition upon his suggestion against the said Lisburn Commissioners, his own Innocency would not thereby be cleared, nor the merits of the cause examined. The said Commissioners, if there was a Quorum of them in being, could not retract their pretended definitive Sentences (from which the Petitioner had appealed) tho' they were convinced that those Sentences were bad, and tho' they would willingly revoke them: for their Office and Jurisdiction of the Cause and their power over him expired at their passing those Sentences against him; *Judex delegatus diffinitivè sententiando, sive bene, sive male, officio functus est, & ejus Jurisdictio cessat*; 27 H. 8. f. 16. *Fleta. l. 6. c. 37. n. 14. Extra. l. 1. tit. 29. c. 9. Cod. l. 7. tit. 48. c. 50. Reform. p. 275, 277.* No Ordinary can reverse his own definitive; *Sext. De app. c. 10*: as it is in the Temporal Courts of Record, where there is an error in Law (which is the default of the Justices) the same Court cannot reverse the Judgment by or with a Writ of Error; but this Error ought to be reversed in another Court before other Justices by a Writ of Error; *Fitzh. N. B. n. 2 r. l.* No Bishop nor Arch-Bishop, as such, could reverse the definitive Sentence of the King's Special Commissioners for Ecclesiastical Causes, or meddle with their Proceedings; because such Commissioners are Superior to any Ordinary save the Supreme; *Delegatus à Principe vices Principis gerit, & in causa sibi à Principe specialiter delegatâ superior & Major est Legato, & omni Ordinario; & Ordinarius non potest se intromittere de his, quæ sunt à Delegato Principis, quia mandatum speciale derogat generali*; *Extra. l. 1. tit. 29. c. 11. & tit. 30. c. 2. & tit. 31. c. 11. Sect. 3. Metropolitanus de appellatione ad nos interpositâ cognoscere*

noscere omnino non valet ; *Id. l. 2. tit. 28. c. 54.* And so says the *English Statute 25 H. 8. c. 19. Sect. penult.* and the *Irish Statute 28 H. 8. c. 19. f. 118* ; and *Moor's Cas. 1070.* and *Gro. Jac. 82.* No Bishop, or Arch-Bishop, as such, can absolve a man excommunicated by *special Ecclesiastical Commissioners* of the Pope or Prince, unless in article of death, because of their *special Authority* as aforesaid ; *Cum Delegatus Papæ sit major omni ordinario, excommunicatus ab hujusmodi delegato non potest sine mandato Papæ per alium (præterquam in articulo mortis) absolutionis gratiam obtinere* ; *Extra. l. 1. tit. 3. c. 11. Sect. 3. & tit. 30. c. 4. glos. k. & l. 5. tit. 39. c. 39. glos. c. Decretum 21. Dist. c. 4. & 11. q. 3. c. 40. & 27. q. 1. c. 19. glos. c. Durand. Spec. l. 1. p. 39. n. 49. Marant. Spec. p. 166. n. 59. Navar. Tom. 2. p. 268. n. 5. Lancell. de Attent. p. 211. n. 5. Socin. de Sent. Excom. f. 387. n. 135. Piacet. Prax. p. 333. Lynw. p. 292. glos. e. Reform. p. 162, 167, 200.* The Lords, the Chancellor and Keeper of the Great Seal of England could not admit the Petitioner's Appeal from the said *Lisburn Commissioners*, as they were *special Delegates of the King's Deputies* or *Lords Justices of Ireland*, according to the *strict rules of Law* before set forth. The said *Irish Act of Appeals* (altho' it might direct the said Appeal to be made to the King in his High Court of Chancery in England, and might require the said Lord Chancellor and Keeper to grant a Commission of Delegates upon the said Appeal.) yet this Act, being made in the *subordinary Kingdom of Ireland*, could not bind the Court of Chancery in the *Superior Realm of England*. His late Majesty King *William* might well refuse the allowance of an Appeal made from the Delegates of his Deputies, and presented to his Royal person, as a right and due by Justice ; seeing he had committed all his judiciary power in matters of Justice to his *Ministers of Justice*, as aforesaid. Such Ecclesiastical Appeals, as they are *ordinary remedies*, ought not to be made to the High Court of Parliament ; *Nunquam decurritur ad extraordinarium, sed ubi deficit Ordinarium* ; 4 *Inst. 81.* These Appeals are *examinable* only in an Ecclesiastical Court ; and the Statute 1 *H. 4. c. 14* prohibited such Appeals, especially in the first instance ;
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Shore's Cases, p. 125. Since therefore there ought not to be a failure of Justice within her Majesty's Jurisdiction, there ought to be an ordinary remedy where there is a common right: The Queen will keep no man from his right, or stop the course of Justice, or any legal cause depending in an inferior Court from being sent to a superior Court for a lawful tryal; her Majesty will not deprive any of her Subjects of the benefit of the Law; 3. Mod. Rep. 333. *Heth*. 27. 2. *Brownl.* 20. 12. Rep. 66: *Dominus Rex est omnibus & singulis de Regno suo Justitiæ Debitor*; 20. E. 1. Rot. 14. The King's will is what Law willeth; *Hæc voluntas Regis, per Justitios & legem suam unum est dicere*; 4 Inst. 71. To appeal to the King and to his Court of Chancery, where the King is always present, is all one, 9. Rep. 99. viz. as to the effect for obtaining a Commission of Delegates; for this recourse is according to the old Laws of King Edgar and Canute; for lack of Justice else-where, the party grieved in the Hundred Court or the Sheriff's Turn had his Writ of Error to the King; and if the party was oppressed in the said Court by the Bp. in an Eccles. cause, he had his Appeal to the King; *Si quis summi Juris onere domi prematur, ad Regem, ut is id oneris allevet, provocato*; *Lamb. Arch.* p. 15, 100. Bacon of the Government of England, p. 41, 43 80. It cannot be imagined that the King in person should hear & receive all those complaints and provocations made to him from all the Hundries and Turns throughout the Realm; but this appealing and complaining was made to the King in Chancery as aforesaid, and was according to the old Law of King Alfred, viz. That out of the Court of Chancery remedial Writs should be granted without difficulty upon complaints of the Subjects brought thither; and as the Lord Chief Justice Cook says, That Law continues to this day 4 Inst. 78. *Curia Cancellaria Regiæ est Curia Ordinaria pro brevibus orinalibus emanandis, & Jurisdictio ibidem est coram Domino Rege* 4 Inst. 78, 81: Wray Lord Chief Justice and the whole Court of B. R. resolved, That all Pleas in Chancery, according to the ordinary power, are coram Dominâ Reginâ in Cancellariâ, and that the Lord-Keeper of the Great-Seal or the Lord Chancellor of England is but the Queen's Deputy during her pleasure; and that the Ser-

vice of the Serjeant at Arms, made to the Queen's Deputy, is as done to the Queen her self; 9 Rep. 99. The Ld. Chanc. grants a pardon to a man slayer *je defendendo*, without speaking to the Queen for it, 2 Inst. 316: Fitzh. n. 287. F. and much more his Ldp may grant a Commission of Appeal without the Queen's special order. Where a man is grieved, and has no remedy at the Temporal Law, there is a remedy for him in the Ecclesiastical Law, as a Lord Chief Justice said in March's Rep. 153. When particular Courts fail of Justice, the High Court of Chancery, as the general Court, gives remedy; otherwise the Subject might have just Cause of Suit, and he should not have remedy; 4 Inst. 213. and Co. 1. Rep. 139. These are maxims of the Common-Law; The Law shall not make a construction to do wrong, Co. Littl. 183; nor favour any injurious thing, Id. 361: It favours things which come from nature and the order of nature, Id. 197; and certainty of time and place in all things pertaining to Law; Bendl. 149: It respects matters of substance rather than circumstances of matters; Co. Littl. 139: and construes things according to the common intendment, the beginning, cause, and end of things, and their possibility; Id. 21, 28, 30, 91: It gives a remedy to a man for a thing, wheresoever it gives him the thing, Co. Littl. 56: and so far favours right, that it will rather suffer a thing against a principle of Law, than that a man should be without remedy in case of wrong; 4 H. 7. 4. and 11 H. 7. 10: and the Law will rather tolerate a mischief against the Law of nature than a general Inconveniency, Hob. 224. Wherefore seeing the Petitioner's Querel of Nullities is not a present remedy against injustice; for it hath not a suspensive effect without the adherent vertue of an appeal as aforesaid; but his appeal is due by Common-Law, and is an ordinary right against wrong, and a necessary right against an intolerable wrong; and is also a natural defence, and lies in order of nature from inferiors and Delegates to Delegates and the immediate Superiors; and is directed to a certain place and office of Justice, according to the reason & course of legal remedies; now if the Petitioner cannot obtain a remedial Commission of Delegates in her Majesty's High Court of Chancery upon *his said Appeals*, such *Lisburn-Com-*

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missioners may *sequester, suspend, interdict* and *deprive* all the Clergy, and all the Bishops and Arch-Bishops of Ireland, and also *excommunicate* them, and all the Laity in this Kingdom, in one instance, without just cause, legal process or any ordinary redress; and their sentences or opinions, however erroneous, if *inappealable*, will become as Canons and Laws. That which has been may be; the Petitioner's case may be a precedent of fatal consequence, if he shall have no remedy where he has a right; therefore better a personal loss or mischief than such an inconvenience; It is better that an Ecclesiastical Commissioner and some others may be forced in the Court of Delegates to recant their erroneous opinions, and repay costs, and also refund mesne profits to the Petitioner, than that there should be a failure of Justice within her Majesty's Jurisdiction; and that the Polity of the Church might be endangered by arbitrary and uncontrollable power without any ordinary means of redress.

The Canons and the Common Law of the Church do require the allowance of such Commissions of Appeal; they are not to be impetrated and granted by grace, and upon supplication of the Prince, but as common rights of the Subject, and due by Justice to the Appellant in the Court of Chancery, as before hath been shewn, and may be more fully proved, and ought to be further insisted on in this argument; for if the Commission of Delegates be not grantable of right, the Petitioner's appeal will be too little purpose: In cases of Appeals, the Court of Chancery, as it is *officina Justitiae*, is the same in Rome, London, Dublin, and all other Seats of Chief Governors throughout Christendom, as afore hath been intimated: and the appealing to the Pope and See Apostolick, to the Prince and his Chancery, to the Arch-Bishop, his Chancellor and to his Consistory, is the same in effect; and Rescripts of Justice and Commissions of Appeals are issuable out of those Courts, as rights of the Subjects, and due to them by the common Law of the Church, except in special cases; as in case of Heresy; *Non valet Rescriptum impetratum, ab heretico; quoniam hereticus caret omni legum auxilio; Extra. l. 5. tit. 20. c. 4. glōf. f.* and in cases of notorious enormities, and of appealing from Ecclesiastical Commissioners,
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who in their Commission had the clause *app. rem.* and in other cases formerly mentioned; but in ordinary cases, Commissions of Appeals are grantable in Chancery, as of course and right, without supplicating for them as favours; *Quod de jure communi competit, superfluum est precibus impetrare: Indulgentiâ vel privilegio impetrari non debet Rescriptum ad appellandum, nisi ubi à jure vel à Judice vel à superiore appellatio prohibetur; ut si in notorio crimine Jacens vellet appellare, vel ut non obstante appellatione in omni causa procedatur; Extra. l. 1. tit. 3. c. 1. & Innoc. in loc. Littera Apostolica de manu Papæ vel Cancellarii sui, vel illius qui ad hoc officium per Papam Deputatus est, debent recipi: Quilibet per nuncium Litteras impetrat, & hoc Papa scit & tolerat, nec aliquem repellit; Extra. l. 5. tit. 20. c. 4. in casu & glos. g. Littera Apostolica de simplici justitiâ formam habentes possunt facile obtineri; Ibid. c. 8. Ad Commissionem appellationis faciendam sufficit in casu prohibito, quod probabilis sit causa; multo fortius in casibus non prohibitis; Sext. de app. c. 3. glos. x. y. A Commission cannot be denied to an excommunicated person, either upon his appeal or complaint of the Excommunication; because otherwise he can have no remedy against an unjust Excommunication; *Rescriptum impetretur ab excommunicato in causâ excommunicationis vel appellationis; alias sequeretur quod excommunicatus injuste non haberet aliquod remedium contra injustam Excommunicationem; Sext. De Rescriptis, c. 1. in text. & casu;* and therefore the Canon-Law expressly provided that a Commission of Delegates be granted to an excommunicated Appellant; otherwise his Appeal would be no benefit to him: *Excommunicatus potest appellare, & prosegui appellationem, & Litteras impetrare; Quia nihil excommunicato appellare prodesset, si non posset appellationem suam prosegui & super eâ Litteras impetrare; Extra. l. 2. tit. 25. c. 14.* It would be a foul imputation on the pure Law, To give the Subject a right and no remedy, or such a remedy he cannot get, or at least without extraordinary means to come at it; To allow him an appeal, and command the Appellant to prosecute it before Delegates upon a Commission which he cannot obtain, or not without much favour and great difficulty; This dealing with the Subject would be*

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tantalizing him, and is repugnant to the exprefs texts of the
 Canon-Law; *Volumus & Apostolicâ auctoritatē mandamus, ut si*
Presbyter, de quo agitur post excommunicationem suam, Apostolicam
sedem adire voluerit, nullus iter ejus impedire præsumat, 3. q. 9.
c. 12. Omnis oppressus liberè sacerdotum (si voluerit) appellet Ju-
dicium, & à nullo prohibeatur; sed ab his fulciatur & liberetur :
2. q. 6. c. 3. Si quis pulsatus fuerit in aliquâ aduersitate, licenter
hanc sanctam Apostolicam sedem appellet, et ad eam, quasi ad ca-
put, suffugium habeat nè ipse innocens damnetur, aut Ecclesia sua
detrimentum patiatur ; Ibid. c. 4. Omnes qui in quibusdam gra-
vioribus pulsantur vel criminantur causis, quoties necesse fuerit, li-
berè Apostolicam appellent sedem, atque ad eam, quasi ad matrem,
confugiant ; Ibid. c. 5. Ad Romanam Ecclesiam ab omnibus, max-
imè ab oppressis appellandum est, et concurrendum quasi ad matrem ;
ut ejus uberibus nutriantur, auctoritate defendantur, et à suis op-
pressionibus revelentur : quia non potest nec debet mater oblivisci
filium suum ; Ibid. c. 8. Ut à quibuscunque Judicibus Ecclesiasti-
cis ad alios Judices Ecclesiasticos (ubi est auctoritas major)
fuerit provocandum, Audientia non denegatur ; Ibid. c. 9. Appel-
lationibus interpositis ad Apostolicam sedem tenemini humiliter
et devotè deferre ; Extra. l. 2. tit. 24. c. 19. These Texts
 (and many more such in the Canon-Law) do demonstrate,
 That the Apostolick See or the Court of Chancery in Rome,
 (as it was an Office of Justice, and appointed for the receipt
 of Appeals, when the said Irish Act of Appeal 28 H. 8. c. 6.
 was made) was a known open Court or Office, whither the
 Appellant or his Agent might bring in his Appeal in all Eccle-
 siastical causes (which were not expressly prohibited) and he
 might there impetrate or sue out of course a Commission of De-
 legates upon his said appeal; and it is also a demonstration upon
 the said Act, that the Petitioner's appeals do now lie of course
 in the High Court of Chancery of Ireland for a Commission of
 Delegates, because such Appeals, before that Act, might have
 been made to the Court of Rome, and there they could not be
 denied, nor could a Commission there be denied upon such
 Appeals ; *Audientia non denegetur*, as aforesaid : and the Refor-
 mers of the Ecclesiastical Laws of England did in effect confirm

those ancient Canons concerning Commissions of Appeals; *Cum causa per appellationem ad nostram Majestatem devoluta fuerit, eam vel Concilio Provinciali definire volumus vel à tribus quatuorve Episcopis à nobis ad id constituendis; Reform. De app. c. 11. Non est in facultate Judicis, ad quem appellatur, vel recipere vel renuere appellationem; quin si Justa fuerit, eam recipere cogitur, Id. c. 51.*

The knowledge of the Canon-Law, if applied to the Petitioner's Case, might exact for him a Commission upon his Appeals; for the clause *app. rem.* (which could be the only bar in his recourse to the High Court of Chancery for such Commission) was removed out of his way; seeing that clause was omitted in the *Lisburn* Commission, as hath been shewn before; and the omission or insertion of that clause makes a Regal Commission to be a High Commission or not in Ecclesiastical causes of cognizance of the first instance. It may seem want of knowledge in the Canon-Law to assert That the appealing from the King's Delegates to the King is as absurd as to appeal from the King to the King, *ab eodem ad eundem*; or that such appealing must be made only to the person of the King; such assertions without limitation might with one stroke confound the doctrine of Appeals; viz. *A Delegato ad Delegantem appelletur*, and almost all that has been before said in this Argument. A delegated power certainly cannot be the supreme power. True it is, the English Statute 39 Eliz. c. 8. ordained That the sentences of Deprivation, given against Bishops and Deans within the first four years of the Reign of that Queen, were just and lawful; and that the appeals from those Sentences were made in secret, and were unjust and unlawful; and therefore that Parliament (by which all the Subjects were concluded) did adjudge and declare that those Sentences were good and sufficient in Law, and should remain as such; Any appeal, exception or other matter or thing whatsoever in any wise to the contrary notwithstanding; Those Bishops and Deans were deprived by the Queen's Ecclesiastical Commissioners *primo Eliz.* for offences proved and confessed, *Poph. Rep. 60. viz.* for disowning the Queen's Supremacy in Ecclesiastical Causes; and for opposing the Reformation

formation of Religion, *Burnet's Hist. Part 2. p. 401.* And none may appeal from any *Statute-Law* : but this Statute strongly implies, that those appeals would have been allowed, if they had been *duly interposed*, and had *shewn cause* why the Sentences had been unlawful or unjust : and *since a penal Statute is restrained to its own Cases*, Archdeacons and other inferior Clergy men (*being by definitive Sentences deprived by these Commissioners within those four years*) might appeal from those Sentences ; and that after those years, even Bishops and Deans might appeal from those Commissioners, if the *Prerogative-clause* of *omni app. rem.* had not prohibited them ; but in that case, *this clause* must be inserted in their Commission in *express words*, as hath been proved ; in which case the Regal Prerogative is *stronger* than the Papal ; for *that clause* put into a Papal Commission restrains only *frivolous appeals*, or those made to the Pope's Chancellor ; seeing the Canon-Law had declared that the Pope could not grant such a Commission, where-by the party grieved by his Commissioners might not appeal from them to him ; *Jus appellandi ita spectat ad Principis superioritatem ut Princeps non possit concedere, nè ad eum appelletur* ; *Pereyr. Prompt. Jurid. tit. app. p. 17. n. 54. Appellari potest à Rege, quatenus est dux, ad superiorem, licet non quatenus est Rex ; & quotidie appellatur à Delegato, quatenus est Delegatus Papæ, ad Papam ; Navar, Vol. 2. p. 276. Consil. 9. n. 2.* When a Regal Commissioner is a Judge, and received Jurisdiction of Ecclesiastical Causes from his Prince, the recourse of an appeal lies from him to that Prince ; *Si quis Episcopus vel Clericus alius habet Jurisdictionem à Principe, & judicat vigore illius Jurisdictionis, ab eo appellatur ad Principem, non ad Papam, Cod. l. 7. tit. 62. c. 38. glos. i. Si appelletur à Delegato tantum, sive sit Delegatus ad universitatem causarum, sive sit Delegatus ad unam causam tantum, semper de jure appellandum est ad suum Delegantem ; Extra. de app. c. 66. glos. a.* It is an evidence in Law that appeals lie from Papal and Regal Commissioners in Ecclesiastical Causes of the first instance, because there is a general Rule, That any man may appeal twice in the same cause from definitives ; *Secundum Jura appellanti licet in eadem causâ bis appellare,*

appellare, *Extra*, l. 2. tit. 28. c. 39. The Civil and Canon-Law does allow the Appellant from a definitive Sentence to bring in new matters before the Judge *ad quem*, which he had not proved or alledged before the Judge *à quo*; and therefore such Appellant needs not to express any grievance in his appeal; because the Law presumes that he was grieved. This Law is such a privilege of the Subject as is called *Lex stans sicut lilium inter spinas*, *God. l. 7. tit. 63. c. 4. Extra. de app. c. 63. glos. b. Clem. de app. c. 5. Marant. Spec. p. 355. n. 181.* This is likewise allowed amongst the Reformed Ecclesiastical Laws, *In appellatione à diffinitivâ sententiâ (cùm non sit necessarium causam exprimere) appellans cum unam causam exposuerit agendo, aliam poterit, prosequi; & post eam, aliam quoad ei suppetent; quia non allegatam vel probatum in causâ principali potest allegari & probari in causâ appellationis; Reform. de app. c. 20, 25.* Therefore this benefit in an appeal is the right of the Subject; and it cannot be presumed that any Christian Prince, no not the Pope himself, would take away that right from the Subject without a just and express cause, especially where he declares in his Commission that his Commissioners should act and decree according to the course of the Ecclesiastical Law; *Ubi contraria voluntas Papa non apparet, Delegatus Juris formam servare debet, & rationabiles exceptiones admittere; Extra. l. 1. tit. 29. c. 13. Juri nullius intendit Papa derogare; Ibid. c. 15. glos. k.* It is a Rule in the Canon-Law, that no man, no not the supreme Prince, ought to be Judge in his own cause; *Papa Judex esse non debet in causâ propriâ, 16. q. 6. c. 1.* A Statute against natural equity is void, as to make a man Judge in his own cause, *Hob. 87.* It has been before said and proved that Suits in the Ecclesiastical Courts in *negotio correctionis* are the King's Suits; and therefore it may seem unreasonable that appeals in those Suits should be made to the person of the King; Judges must be free from partiality, yea from suspicion of it: It was said by a Judge & wise Historian, That *Qu. Eliz. in Eccles. causes could do nothing in person, but must act by her Commissioners*, *Bacon's Hist. of Qu. Eliz. p. 158; That she had not power in determining the last appeal and definitive sentence in Ecclesiastical*

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Controversies; *Id.* p. 161. And that King H. 8th, tho' he was Supreme Head in Ecclesiastical Causes, had not the definitive Sentence in appeal, *Id.* p. 133. He could no more in person admit, hear & determine an appeal of Hereſy than an appeal of Felony; for Decrees & Judgments in ſuch caſes are to be given in a Court of Judicature and according to Law, as it is artificial reaſon. Of cauſes, in which the King himſelf is Party, he may not perſonally take cognizance, but he is to hear them judicially by his Delegates, as *Lambard* obſerved in his *Archaion*: p. 274. The Petitioner's Archdeaconry is his Eccleſiaſtical Freehold, and it is an hereditament, *Beneficium eſt hereditas Clerici*, *Othob.* p. 99. gloſ. u: and the King's paſſing it to another by Patent, upon the pretended Sentence of deprivation given by the ſaid *Lisburn* Commiſſioners, may be eſteemed the King's Cauſe; and therefore the diſcuſſion or the legal queſtion, whether the Petitioner's Appeal or Querel of Nullities (as it is a right of the Subject) againſt that Sentence ſhould be admitted or not for the determination thereof before Delegates, ought to be examined in an Ordinary Court of Juſtice and by the ordinary courſe of Law, *Dyer* 176. 16 Car. 1. c. 10. It can be no diſreſpect to his late Majeſty to ſay, That he was deceived in that grant, or that the ſaid Appeal or the admiſſion of it (as it is due in Juſtice) ought not to be examined by him in perſon, becauſe the Law and the King's will is the ſame; *Talis præſumitur mens Principis qualis eſt mens legis*; *Vant.* p. 234. n. 58. And the Law had directed the examination of that matter to a proper Officer in a known Office of Juſtice; the validity of that grant will depend upon the validity of the ſaid Sentence, and on the illegality of the ſaid Appeal or Querel; and, as it hath been fully proved before, if the ſaid Appeal be lawful, the ſaid Sentence, during that Appeal, had no force in Law; and the Archdeaconry was not vacant, and the ſaid grant was void; for if the deſtitution was null the inſtitution muſt be a nullity; *Si in ſententiâ exprimitur pœna privationis, & condemnatus appellat, durante appellatione non cenſetur privatus; & hoc pro indubitato, practicatur in Rota Rom. quod Collatio beneficii vacantis per privationem facta, antequam ſententia priva-*

tionis transfret in rem Judicatam, est nulla; Piafec. Prax. Episc. p. 338. n. 17. It is an adjudged case in the Canon-Law, Si Presbytero fuit Ecclesia canonicè concessa & tradita, et postea de crimine aliquo non fuit convictus propter quod de Jure debeat spoliari, vel post appellationem Ecclesiâ illâ fuerit spoliatus, ipsam ei faciat restitui cum fructibus perceptis; Extra. l. 5. tit. 1. c. 12. Si nulla fuit destitutio, nulla fuit institutio; Id. l. 5. tit. 31. c. 18. glos. c. This appeal interposed from the null sentences of the said Commissioners is a legal and usual right of the Subject, and thereby the Law gives him many benefits, even before he obtains in Chancery a Commission of Delegates; Non est novum, nec inconveniens ut appelletur ab actu nullo & à sententiâ nullâ: Nullitas proposita per viam appellationis triplicem operatur effectum, viz. facit attentata, impedit executionem, et rescindit sententiam; Lancell. de Attent. p. 196. n. 1, 2. Attentata sunt accessoria ad ipsam appellationem, et proveniunt ex naturâ appellationis, et ex beneficio Justitiæ; Id. p. 409. n. 26, 27. Appellatio in criminalibus interposita, etiamsi videretur injusta, executionem suspendit, nisi appellans sit confessus et convictus; Id. p. 194. n. 10, 12. Appellatio eximit appellantem à Jurisdictione Judicis à quo, etiamsi appellatio non sit superiori presentata vel causa commissa; ergo necessario et consequenter operatur revocationem attentorum, etiam ante Commissionem, dummodo pars habeat illius notitiam; Id. p. 178. n. 11, 12. Pendente articulo attentorum fatalia non currunt in negotio principali, Ibid. n. 37. Si lapsa sint fatalia, tamen appellatio non dicatur deserta, causâ in in Consistorio Principis pendente; non solum si Princeps in causâ non pronunciat, verum etiam si nulliter pronunciaverit; quia per pronunciationem nullam non tollitur manus Principis appositio; Ibid. n. 38, 39, 40. Si steterit per Judicem quo minus causa intra tempus fatalium expediatur, dum multiplex fuerit interpellatio, vel appellans impedimento legitimo fuerit detentus, appellatio non censetur deserta; Ibid. n. 42, 45. Regula est quod appellatio conservat statum appellantis, ita ut appellans possit omnia explicare, quæ poterat ante sententiam; Et quod excommunicatus post appellationem ab eo interpositam non tenetur disistere à divinis, Ibid. n. 84, 88. Presbyterum, pro eo quod post excommunicationem contra appella-

appellationem factam divina cantavit, nullatenus inquietes; sed ad eum statum reducās omnia, in quo erant tempore appellationis commissæ; Extra. de app. c. 16.

The *Quotations* (taken out of the Canon-Law, and brought in proof of this Argument) ought to be considered as *legal proofs*; for the Ecclesiastical Law is the *Law of the Land*, so far as it is *not repugnant* to the Statutes, Common-Law and Customs of these Kingdoms, or to the *Prerogative Royal*: This is the *declaration* of Parliaments in *England and Ireland* in 25 *H. 8. c. 19*, and 28 *H. 8. c. 13*; and is likewise the *Resolution* of the Temporal Judges in *Cawdrie's Case*, 5, *Rep. 9*, 32, and in 12, *Rep. 72, 73*, and in *Vaugh. Rep. 21, 244, 246, 327, 329*. The ancient Canon-Law of the Church of *England* was contained in the *Decretum*, the *Decretals* and in the *Provincial Constitutions*, as was declared in *Lynn. Provinc. p. 297, in text. & glos. b, i, k*. And as to *Jurisdiction*, the Ecclesiastical and Temporal is and was founded upon the same *Common-Law* of the Realm, and is of *equal age and authority*; *Shore's Cases, p. 99*. In a *Synod of the Clergy of Ireland* held at *Cashel*, and in a *Parliament* held at *Lismore* by King *H. 2d*. It was ordained that all the *Laws of the Church of England* should be of full force in all parts of *Ireland*, as is recorded by *Girald Cambrensis* (who was then in *Ireland*, and was Secretary to the said King *H. 2d*.) And by *Matthew Paris* the famous *Historiographer* of King *H. 3d*, saying, *Rex Henricus antequam ex Hiberniā rediret apud Lismore Concilium congregavit, ubi leges Angliæ sunt ab omnibus gratanter receptæ, & Juratoriâ cautione præstitâ confirmatæ*, *Mat. Paris Hist. ad A. D. 1172. Omnia divina Juxta quod Anglicana observat Ecclesia, in omnibus partibus Hiberniæ amodò tractentur*; *Girald. Cambr. Hib. Expugn. l. 2. c. 32*. The *Temporal Common Law* of *England*, and all the *Statutes which are declaratory of that Law*, and other *Statutes made there before the 10th of H. 7.* are of force in *Ireland*: therefore seeing the *Canons* and the *ancient Laws* of the Church in both Kingdoms, and the *Common-Law* and the *Statutes* thereof concerning *Appeals*, and the Judges in their *Exposition* of those *Laws and Statutes* do allow and direct

direct such Appeals and Commissions of Delegates, as in the Petitioner's case, nothing may remain wanting in full proof of this Point but precedents: since custom is the best expositor of Laws, *Consuetudo optima est legum interpretres*, as is said in the Decretal, *Extra. l. 1. tit. 4. c. 8.* Altho' indeed this right of appealing needs no support by precedents, because it is a common undoubted right of the Subject, and due by natural Justice, and is as an universal truth, that a party, who is manifestly wronged, ought to be righted by an Ordinary remedy; and in such case the Rule is, *non exemplis, sed legibus est Judicandum*, God, l. 7. tit. 45. c. 12:

It cannot be expected to shew a precedent of an Appeal and Commission of Delegates in point and in every circumstance with the Petitioner's Case; for the said Lisburn-Commission was the first of that kind and form which ever was made; but this Lisburn-Commission in substance and by reason of Law is the same with the Ecclesiastical Commissions granted by Arch-Bishops and Bishops to their Surrogates; and is the same with the Regal Commissions granted to Arch-Bishops, Bishops and Cathedral Deans in this Kingdom for their exercise of Ecclesiastical Jurisdiction in their respective Precincts; and is likewise the same with the Regal Commissions grounded upon the Irish Acts 28 H. 8. c. 19, and 2 Eliz. c. 1, empowering her Majesty's Commissaries in the Prerogative-Court to take cognizance of all Ecclesiastical causes and over all persons in Ireland; and appeals lie from those Commissioners in those causes to her Majesty in her High Court of Chancery for a Commission of Delegates, and those Commissions upon such appeals are there grantable of course as due by justice and as a common right of the Subject, as hath been shewn before in several passages of this Argument.

Precedents in parallel cases have the like force, especially where there is parity or majority of reason, and also where common right and necessity of justice requires an appeal, as in the Petitioner's case: *ubi subest eadem ratio debet idem jus* for pari etiam in casu non expresso, *Lynw. p. 144. glof. k. Similis aequalis ratio similis iura suadent in provocacione*, *Extra. l. 2. tit. 30.*

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tit. 30. c. 4. *Quod uni juri communi conceditur ; trahi potest ab aliis in exemplum, et nulli debet denegari*, Id. l. 2. tit. 7. c. 1. glos. g. *Cui licet quod est plus, licet utiq; quod est minus* ; Sext. Jur. Reg. 53. Seeing an appeal lies of course to her Majesty in her High Court of Chancery from Regal Commissaries in her Majesty's supreme Court of Prerogative in *Irel.* which Court hath *supra-ordinary* power throughout this whole Kingdom ; for it hath Jurisdiction of *simple and double Querels*, and may act by *meer office*, and may receive appeals, not only from the Bishops, but also from the several Arch-Bishops of Ireland, when they grieve the Subjects in their Consistories, Inquisitions, Visitations or Synods ; and the Lord High Chancellor of Ireland without difficulty will admit appeals from the said Prerogative Court, and grant Commissions of *Delegates* upon those appeals, as aforesaid. What his Lordship does more, he may do less ; he may do in ordinary, what he does in extraordinary cases ; and therefore he may grant to the Petitioner a Commission of Delegates upon his appeals from the said *Lisburn-Commissioners*, who were appointed as *Ordinaries*, and had power only in two Dioceses in this Kingdom, and over only the Bishop and Clergy there ; and by their Commission they were more restrain'd in Jurisdiction than the said Bishop ; they could not proceed summarily, nor without adjournments ; they could not act otherwise than according to the course of the Ecclesiastical Laws of force in this Realm, and also according to the Statutes thereof ; and they had their Commission by warrant of the Lords Justices ; but the said Bishop had, as all other Bishops here have, their Commissions immediately from the Crown : and yet appeals lie of course from them, and they are as the Queen's immediate Delegates or Commissioners for Ecclesiastical causes, or as they are her Majesty's *Vicars-General* in those causes within their particular Districts ; and their Bishopricks are Royal Donatives, as before hath been shewn. In the year of our Lord 1671 Richard Vaughan Esq; (being prosecuted in *causa incestus & Ex officio* in the Diocese of Derry before the Bishop thereof, and conceiving himself aggrieved in that cause by the said Bishop) did appeal from him to the King

in the High Court of Chancery of Ireland for a Commission of Delegates: and the then Lord Chancellor admitted the said *Vaughan's* appeal, not only from the said Bishop's definitive sentence in the cause, but also from the Bishop's *denial of Apostles* upon the said appeal; and thereupon a Commission of Delegates, as a complement of right, was granted and issued out of Chancery, dated 10 April 13 Car. 2. as appears in the Registry of the Supreme Court of Delegates in Dublin, amongst many other such Commissions of Appeals there recorded from Irish Bishops: But the right and reason in the Petitioner's case is much stronger than in the case of *Vaughan* aforesaid; for the said *Lisburn* Commissioners did not tax the Petitioner with any immorality or enormity, and he then had and now hath no other remedy but by a Commission of Appeal from Chancery; whereas the said *Vaughan* was charged by his own Bishop with an enormous crime; and he might have appealed from him to his Arch-Bishop, or to the King's Supreme Court of Prerogative from the said definitive sentence, as he did appeal to the said Prerogative Court from some interlocutories in that cause; prout *ibid.* Registr. ut *supra*.

Cathedral Deanries in Ireland are Royal Donatives; and their Deans, as to their Jurisdiction within their respective Precincts, are Regal Commissioners for Ecclesiastical causes. A. D. 1640 the then Dean of Christ Church, Dublin, made in Chapter many judicial acts against *William Garvil*, one of their Prebendaries, in negotio deprivationis for non-residence and absence out of this Kingdom: from which acts the said *Garvil* by his Proctor appealed to the King in the High Court of Chancery in England; and his appeal preserved him in his right to this Prebend, for the space of two years, until he voided it by cession. In the year 1679 the now Lord Arch-Bishop of Dublin, then Chancellor of the Cathedral Church of St. Patrick's Dublin, was suspended of his office and benefice of his Chancellorship by the D. of that Cathedral, and was likewise sequestered from the profits of the said Chancellorship, as for his contumacy in not submitting to the Visitation of the said Dean, from which suspension & sequestration the said Chancellor appealed to the then

then Lord Arch-Bp. of *Dublin* and to his *Audience*; and the appeal was *readily admitted*: and upon a *further appeal* from the said Lord Arch-Bishop to the King in the High Court of *Chancery of Ireland*, the cause was heard and determined in the Court of Delegates. *A. D.* 1703, the said present Lord Arch-Bishop of *Dublin* (having proceeded against the Reverend *John Clayton*, the Prebendary of *St. Michan* of the Cathedral Church of *Christ Church, Dublin*, for not submitting to the said Arch-bp's *Visiting* the said *Clayton* out of the *Precinct* of the said *Cathedral Church*, and as he says, *for not quitting* his privilege as a *Chapter-man* of the said Cathedral) pronounced in the Consistorial Court of *St. Patrick's, Dublin*, that the said *Clayton* was *contumacious*, and decreed that he should be cited to shew cause why he should not be *excommunicated*; from which *Proceedings* and *Decrees* the said *Clayton* appealed to her Majesty in her High Court of *Chancery in England*, where the Right Honourable the present Lord Keeper of the Great Seal *admitted* the appeal, and thereupon *granted* a Commission of Delegates, who are now hearing the said appeal and the principal cause. In the year 1692 *Tho. Styles & Sarah Banister* (being sentenced by the then Archdeacon of the Diocese of *Dublin* in a cause of *incest*) appealed from *that sentence* to the late King in the High Court of *Chancery of England*, and the then Lord High Chancellor *admitted the appeal*, and granted to them a Commission of Delegates. Many appeals have been made and allowed from Irish Bishops, *passing by the Arch-Bishops*, to the King or Queen in their High Court of *Chancery in England* for *Commissions* of Delegates; *Gro. Jac.* 264. *Carte's Rep.* 187. In *England* appeals are daily *admitted* in the Court of *Arches*, made immediately to that Court of the Arch-Bishop of *Canterb.* from the *lowest Ecclesiastical Judges* within his Province; *Sheph. Abr. tit. Prerog. p. 99. 2. Brownl.* 28. *Clark's Prax. Eccles. tit. 3. 102.* The Lords Keepers and Lords Chancellors of *England* have often granted *Commissions* of Delegates upon appeals, which were framed out of the form & order prescribed by the Engl. Acts of Appeal 24 & 25 H.8. *Dyer* 240. *Moor* 850: The appeal of the *Cathedral Dean* in *Co.* 13. *Rep.* 70.

Rep. 70. (deprived by Regal Ecclesiastical Commissioners) to the Delegates, or to the King in Chancery for a Commission was allowed, as made within the equity of the Act 28 H. 8. c. 19. The late Lord Chancellor Sommers on 23 of May 1699 granted a Commission of Delegates upon an Appeal from the Commissary in the Deanery of Bridgnorth in Com. Salop. which Deanry was a Royal Peculiar in 12 H. 4. prout Prin's Animadv. p. 405. and therefore it was not an exempt place belonging to a dissolved Monastery, nor within the letter of the said Act. In Dyer 209, & 4 Inst. 340, the Lord Chancellor of England so far admitted the appeal of Coveney as to grant a Commission to two Judges to examine the legality of that appeal; which appeal was found illegal, not because it was not made from some Archbp's Court, or from an exempt place (for the Colledge in that case was exempt from the Jurisdiction of any Ecclesiastical Ordinary) but because the Sentence was not an Ecclesiastical, but was a Temporal Act, from which Coveney had appealed to the K. in Chancery; in which case an Affise and not an Appeal lay. But that appeal had been lawful, if it had been interposed from Visitors of a Cathedral Deanry or another Spiritual Corporation; for in such case (as was agreed by the temporal Judges in 1 Mod. Rep. 84) the appeal lay to the Delegates. If any judgment be given amiss in Courts Christian, it is to be rectified by appeal, according to the Statutes, or by Commissions of Delegates; Vaugh. Rep. 304. Thus Goodman and Turner, Deans of Wells, made several appeals from Regal Commissioners Ecclesiastical; Dyer 273: and it was said in Littl. Rep. 231, that by the Institutes or the Ecclesiastical Law appeals lay to the King in Chancery, before the said Statute 25 H. 8. c. 19, as hath been already proved. A Clergy man in England A.D. 1532 (before the Act against Appeals to Rome was made in 24 H. 8. c. 12.) appealed to K. H. 8. from the Arch-Bp. of Cant. upon suspicion of Heresy, and being examined in the King's Court, perhaps of Delegates, he was set at liberty: Burnet's Hist. of Reform. Part 1. p. 121. The Clergy of England in their Convocations, before the Statute, had acknowledged the Ecclesiastical Supremacy of K. H. 8th. Co. 4. Inst.

323 : and it is not said in that Statute of 25 H. 8. c. 19, that no appeal should be made to the King in Chancery, but such a were interposed from Eccles. Judges in Courts of Arch-Bishops or of exempt Places : and the King cannot be restrained by negative words in a Statute, unless the King be there expressly named ; 1 Gro. 542. 2 Gro. 37. 3 Bulstr. 4. Bonner Bishop of London (being deprived by the Eccles. Commissioners of K. E. 6th) appealed from their sentence to the King and his Court of Chancery, Fox's Martyrol. Vol. 2. p. 697. And tho' he was restored to his Bishoprick by Delegates of Q. M. upon his said appeal ; Burnet's Hist. part 2. p. 247 : yet in Parl. 1 Eliz. he insisted upon this appeal, and that by virtue of it he continued still the only lawful Bishop of London, notwithstanding the said sentence of deprivation, D'Ewe's Journal, p. 51. And the Judges of B. R. 13 Jac. in 3 Bulstr. 74 were inclined to give judgment for the operation of that appeal, and for the continued right of Bonner to that Bishoprick, notwithstanding the Investiture and possession of Bp. Ridley in the same Bishoprick. Seeing then by the foregoing Precedents many Commissions of Delegates were granted as of right to appellants, altho' they had been sentenced as criminals, or as contumacious to Eccles. Visitors, or altho' the letter of the Statutes of appeals could not justify those grants ; but these bars cannot truly be objected in the Petitioner's case, and therefore a Commission of Delegates in Chancery cannot justly be denied him.

The Dioceses of Down and Connor, afore often mentioned, were places as exempt from the Ecclesiastical Jurisdiction of any Bishop or Arch-Bishop, during the said Lisburn-Commissioner's Regal Visitation thereof ; and if the Petitioner had no other right to a Commission of appeal, even that of exemption would bring his case within precedents of such lawful appeals & Commissions of Delegates, and as a right according to the rules of the Canon & Common-Law, and also within the meaning of the said English Statute 25 H. 8. c. 19 : for the said Lisburn-Commissioners by their publick Edict declared that their said Visitation was Regal ; and by their Inhibitory they layd the King's Hand upon all Episcopal Jurisdiction in all places within

the said Dioces; and their *special Commission* tied up the hands of the King's General Commissioners, viz, his Bishop & Arch-Bishop and other inferior Ecclesiastical Judges from exercising any *Jurisdiction* there, until that *Inhibition* be relaxed, as it were, by a Regal *amoveas manum*: and in this Case the difference is not material whether the exemption be temporary or perpetual. *Delegatus Papæ in causâ sibi commissâ Jurisdictionem habet super ordinarium & quemcunq; majorem*; Extra. l. i. tit. 29. c. 11. *Legatus Papæ Commissionem a se factam specialiter impedire non potest*; Ibid. tit. 30. c. 2, 4. Idem l. 5. tit. 34. c. 15. *Princeps per Commissionem imponendo manum suam ligat manus inferiorum*; Barbof. Rep. p. 270. *Per appositionem manûs Papæ impedita est potestas aliorum*; *Talis manûs appositio habet vim decreti annullativi & derogationis, & plus operatur quàm reservatio: super negotio, cui Papa manum apponit, etiam sine inhibitione, ligantur manus inferiorum*; Lancell. de Attent. p. 167. n. 4, 6. *Princeps per suam delegationem specialem censetur tollere omnem Jurisdictionem, & omnem potestatem inferioribus Ordinariis: Et in tantum censetur advocata Jurisdictio ab Ordinario, quòd etiamsi moriatur delegatus, non revertitur causa ad Ordinarium, sed vadit ad Papam, qui delegaverat*; Marant. Spec. p. 389. n. 3. It has been proved before, that the King, by the Common Law of the Realm, as Supreme Ordinary, may exempt any Church or Place from Episcopal Jurisdiction; and that those exempt places and persons are visitable by the King's Ecclesiastical Commissioners; and that the Subjects, being grieved by such Visitors, are to appeal to the King in his High Court of Chancery for a Commission of Delegates, according to the said Statute and Common Law. In Ireland before the year 1641 an Ecclesiastical Eire or Regal Visitation every 7th year went through the several Provinces and Dioces. of this Kingdom; and during that Visitation of a Province or Diocese the Arch-Bishop's and Bishop's Jurisdiction was suspended, prout Bishop Burnet's Life of Bedle, p. 82, 84: Thus anciently in the King's Temporal Jurisdiction, there was an Eire or Visitation, and there were Itinerant Visitors, Commissioners or Justices of Eire roading through the Countrey from seven year to seven.

seven year; and during their Eire all County-Courts and Common-Pleas ceased; *quia in praesentia majoris cessat potestas minoris*: yet the Subjects, being grieved by those *Perlustrantes* and *Visitors*, might be relieved in the King's-Bench by Writs of Error; 4 *Inst.* 7, 78, 184, 185. And thus anciently the Arch-Bishop of Armagh, the Primate of all Ireland, every 7th year held his *Visitation* in the several Provinces and Dioceses of this Kingdom; *Waræus De Præsul. Hibern. p. 250. Jure & usu olim receptissimo Archi-Episcopus Armachanus quolibet septennio visitabat totum Regnum, ceterosq; metropolitanos ad suum Tribunal evocabat, judicabat, & lites causasq; graviores devolutione, appellatione, aliisq; juris præeminentiis aut facti remediis terminabat primatiali auctoritate, prout Jus Primatiale, p. 62, 73. Roob's Analecta, p. 228.* It is an ancient Privilege and Right of the Arch-Episcopal See of Armagh to admit appeals from the Arch-Bishops of Dublin, and from the other Metropolitans of Ireland. A. D. 1467 one *Alsoone* appealed from the sentence of the Metropolitan Court of Dublin to the Primatial Court of Armagh; and *John Bole* then Primate, issued a Commission to *James Leach* to hear and determine the cause of that appeal, who reversed that sentence; *Id. Jus. Primat. p. 23.* and Dr. *Loftus's* printed Case of *Ware* and *Sherley*, p. 30. And Law and Usage did allow all the Subjects of Ireland (being grieved, in all causes, and in every inferior Ecclesiastical Court) to appeal directly, not only to the Apostolick See, or if they pleased to the Arch-bp's Court of Armagh; as was declared in a Decretal of Pope *John* the 22th; *In partibus Hiberniæ ad sedem Apostolicam ex quacunq; causâ hætenus appellari contingit, seu appellatur de presenti, hujusmodi appellantes ad eandem sedem directè; nec non ad Archi-Episcopalem Curiam Armachanam tutorè appellarunt & appellant; Id. Jus Primat. p. 25.* These examples might guide and support the appeals of the Petitioner in his said Case.

The Cathedral-Deanries and Chapters in the Dioceses of Down and Connor are Spiritual Corporations, and of a new foundation, created out of dissolved Priories and Convents: they were erected by King *James* the First by his Charter dated the 20th July in the 7th year of his Reign over England. By that Charter

Charter he constituted several *Dignities* and *Prebends* to be *Members* of those *Chapters*, and gave to the *Dignitaries* and *Prebendaries* respectively several *Rectories* and *Vicarages* which before the said *Dissolution* had been appropriated to the said *Religious Houses* : and he perpetually annexed those *Rectories* and *Vicarages* to the said *Dignities* and *Prebends* ; and granted to the said *Corporations* and their members all the *rights* and *privileges* which belonged to any *Chapter-men* in any *Cathedral* of *England* or *Ireland* : and amongst other *Chapter-men* he appointed and made the then *Archdeacon* of the *Diocese* of *Down* to be a *Dignitary* in the *Chapter* of the *Cathedral* of *Down*, and *D. Murry* to be the *Prebendary* of *Garncastle* in the *Chapter* of *Connor*, granting to them and their *Successors* certain of the said *Rectories* & *Vicarages* for their *Cathedral Service*, and for their honourable *maintainance* : And the said *King* by his said *Charter* declared that he was the *Founder* of the said *Corporations*, and also the *Donor* of the said *Dignities*, *Prebends*, *Rectories* and *Vicarages* : but he did not appoint any *Bishop* or *Arch-Bishop* or other person to be the *special Visitor* of the said *Deans*, *Dignitaries* or *Prebendaries*, or of the said *Corporations* ; and therefore the said *King* and his *Successors* were and are to visit the same by their *Ecclesiastical Commissioners* ; as they are *Visitors* of the *Deans* and *Chapters* of the new *foundations*, and also of other *exempt* *Spiritual Corporations* ; and this *Right* of appointing such *Regal Visitation* by the *Common-Law* is reserved to the *King*, and remains in the *Crown* ; *Fitz-Herb. N.B. n. 42. A. 20. E. 3. 9. 21 E. 3. 60. Davis 4. 46. Raym. 104. 107. Co. Littl. 96. 2 Roll's Abridg. 230. 2 Keebl. 167, 169.* whereby is it evident that the *Petitioner's appeals* lay properly from the said *Lisburn Commissioners* (as they were *Regal Visitors*) to the *King* in his *High Court* of *Chancery* for a *Commission* of *Delegates*, not only upon the account of the *apposition* of the *King's Hand* on the said *Archdeaconry* and *Prebend*, but because they were as *exempt* by virtue of the said *Charter*.

It cannot be denied but that *appeals* have been made to the person of the *King*, and have been admitted, heard and determined

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determined by the King himself, or by his Delegates: Thus A. D. 1538 John Lambert by a fatal resolution (as the Historian speaks) appealed from ABp. Cranmer to K. H. 8th, who in person heard the appeal, and declared Lambert an incorrigible Heretick, and commanded him to be burnt; and that sentence was executed in a most barbarous manner; prout Burnet's Hist. of Reform. Vol. 1. p. 252, 254. And so A. D. 1551 Gardiner Bp. of Winton appealed from the Delegates of K. E. 6th to the King in person; *Id.* Vol. 2. p. 165. In the first case, the Lord Chancellor could not well admit Lambert's appeal (altho' it was made from the Arch-Bp.) because the Appellant was a pretended obstinate Heretick; and in contumacy and heresy no appeal is to be allowed without good cause exprest in the appeal: and in Gardiner's Case, the Delegates were commanded to act and decree against him, notwithstanding any appeal should be made from them; 4 Inst. 340. And altho' he insisted on his appeal in his Objections in Parl. 1 Eliz. yet the Queen's Attorney-General there answered that objection, shewing the clause *app. remota* was in the Commission of those Delegates, D'Ewe's Journal, p. 50. If this clause had been omitted in that Commission (as in Bishop Bonnor's Case) King Edward might have refused the admittance of that appeal, as he denied the appeals of Tonston Bishop of Duresm, Heath Bishop of Worcester, and Day Bishop of Chichester; all which appeals Q. Mary admitted, and thereon she granted a Commission to Delegates, who declared that those appeals were good (yea notwithstanding the said clause *app. remota*) and that the sentences of deprivation, given by former Delegates against those Bishops, were void; prout *Id.* Burnet, part 2. p. 247, 395. Those Princes were not obliged to admit in person any appeal, which was due by Justice; because by law or custom, all judiciary power of Princes was committed to their Ministers of Justice, as before hath been shewn; altho' anciently Kings in person received Appeals, writs of Error and other petitions of right, and they themselves heard them; and sometimes they personally granted Commissions to others to hear those appeals and causes; notwithstanding the Statutes had appointed the King's Officers to grant

those Commissions: Thus the Statute of 28 H. 8. c. 15 directed that the Lord Chancellor should *nominate* Commissioners for the tryal of *Pirates*; yet sometimes the King *nominated* the Commissioners, and the Commission was good: So in the Statute of *Faculties* 25 H. 8. c. 21 it is said that *dispensations* shall be granted by the Arch-Bishop of *Canterb.* and not otherwise than according to the manner and form prescribed by that Act; yet the King often granted those *dispensations* by his Letters Patents, *Hob.* 146: because the King committed his power *cumulative* not *privative*, to ease himself of labour, but not to deprive him of power: for he had a *concurrent* power of Jurisdiction with his Judges, as some say, 2 *Keebl.* 164. And his power of granting Commissions cannot be restrained, unless by *express words* in some Statute, as aforesaid. But where the *Common or Statute-Law* had provided *ordinary methods* and officers of Justice for the admittance of an appeal, and the party applied to *extraordinary means*, viz. to the King in person for a Commission upon the appeal; the King might deny or delay to grant that Commission which his Chancellor ought to do: It was the fault of the appellant to trouble the King with that *mis-application* & improper method. *A. D.* 1698 (amongst the Cases resolved in the House of Lords in England) It is reported in the Case of *William* then Lord Bishop of *Derry* as adjudged in that House, *That his Lordship's appeal to the House of Lords in Ireland from the decree or orders of the Court of Chancery there made in the cause wherein the said Bishop was Plaintiff, and the Society of the Governor and Assistants, London, of the new Plantation in Ulster in the Kingdom of Ireland were defendants, was coram non Judice, and that all the proceedings thereupon are null and void; and that the Court of Chancery in Ireland ought to proceed in the said cause as if no such appeal had been made to the House of Lords there; and if either of the said parties do find themselves aggrieved by the said Decree or orders of the Chancery of Ireland, they are at liberty to pursue their proper remedy by way of appeal to this House; prout Cases in Parl. p. 83.* This is indeed a judgment upon an appeal in a temporal cause; but it may extend, by equity and for relief, to an Eccle-

Ecclesiastical cause ; for both of them *hold* upon the same reason : and as a *temporal appeal*, which lies from the Lord Chancellor, is *due* by the *Common-Law* ; so when a *Caveat* is entred in *Officina Justitiæ* upon the Petition of an *Ecclesiastical appellant*, and thereupon a *contest* ariseth between the *appellant* and *appellee* before the Lord Chancellor, whether the *appeal* ought to be *admitted*, and a *Commission* be granted for *Delegates* to hear and determine it : If his Lordship *grants* the *Commission*, it issues as by *solemn* or *special form*, which otherwise had passed in *common form* : but if his Lordship *denieth* to grant such *Commission*, altho' the appellant *sheweth* that the *admittance* of his *appeal*, and a *grant* of a *Commission* of *Delegates* upon that *appeal* is *due to him*, not only by vertue of the *Statute* of *Appeals*, but also by *Justice* and the *Common-Law* ; this *denial* upon that *contest* is a *judicial act*, and as a *Decree* of Court *given* against the appellant : and certainly the appellant is *aggrieved* by that *denial*, if his *appeal* was lawful & just, as from an *inordinate* and *iniquous* sentence of deprivation of his *Ecclesiastical Freehold* : in that case a *Commission* of *appeal* would be a *proper remedy* in his grievance ; it would be to the appellant as an *Injunction* of *Chancery* to *restore* and *quiet* him in the *possession* of his *said freehold* and *property*, seeing the *said* sentence of deprivation was an undeniable evidence of his former right : And as the *Law* and the *Judgment*, in the Bishop's Case aforesaid, *presume* that the Lord High Chancellor might be *mistaken*, and also might be *grievous* in his *Decree* and *orders* against the *said* Bishop, from which the Bishop had *liberty* to pursue his *proper remedy* by way of *appeal* ; so in the Petitioner's Case, it is not to be *presumed* that the *said* Bishop was *infallible* in his proceedings and sentences against the Petitioner, or so *innocent* as not to *grieve* him ; or that the Petitioner being *excessively* *grieved* should have *no remedy* but *Prayers* and *Tears*, or a *Commission* of *Review*, which is grantable upon *grace* and *meer favour*, and may be *denied*, and was *denied* to him.

There are to be found numerous *Precedents* of *appeals* made from *Papal Delegates* to the *Chancery* or *Court* of *Rome* ; and these

these *Precedents* may be very *useful* to the *Petitioner* in this *Case*: for in all *cases*, in which any *Subject* of *Ireland* (who being *grieved* was wonted and accustomed to make his appeal to the *Bishop* or *Court* of *Rome*, or to the *See Apostolick*) might after the *Irish Act* 28 H. 8. c. 6. appeal to the *Lord Lieutenant* of this *Kingdom* in her *Majesty's High Court of Chancery* of *Ireland*, and the *Lord Chancellor* upon that appeal is bound by that *Act* to grant to the appellant a *Commission of Delegates*: and therefore his *Ldp.* cannot deny the *Petitioner* a *Commission* of appeal, if the appeals were of the same nature with those of the *Petitioner*, and were usually made to the *Pope*, or to the *See Apostolick*, or to the *Court of Rome*. There are two *Precedents* of such appeals, and of like reason with the *Petitioner's*, cited in an *Act of Parliament*, viz. of *Rich. Chetwood* and *Robert Harcourt*, who made their several appeals from the pretended sentences of *Judges Delegates* of *Cardinal Pope* (who was the *Pope's Legate* in *England*) to the *Court of Rome*, and those appeals were not only allowed in that *Court*, but also by that *English Parliament* in 1 *Eliz.* c. 1. in fin. In the *General Council of Lateran* held under *Pope Alexander* the 3d there are many *Precedents* of appeals; and many of them were made in her *Majesty's Kingdoms*, from the *Pope's Delegates* to the *Apostolick See*, and thereupon new *Delegates* were appointed to hear and determine those appeals; and the new *Commissions* were granted without difficulty upon definitive sentences, not only in *civil*, but also in *criminal causes*, in the 2d as well as in the first instance instituted before the former *Commissioners*, if the clause *app. rem.* was not inserted in their *Commission*: and when it was put in it, if a just cause of grievance was express'd in the appeal, a *Delegacy* was not, and could not be denied, no not upon the 2d appeal in the same cause; as may be seen in *Binnius's Councils*, Vol. 7. part 2. p. 705. c. 32. p. 757: c. 13. p. 693. c. 1: p. 694. c. 4, 8, 9. p. 695. c. 14, 15. p. 696. c. 20. Not to mention the appeal of *Q. Kath. A. D.* 1530 made to the *Pope* from his *special Delegates*, and some other cases and precedents of such appeals, hinted before in this Argument; there are the like precedents and cases to be found almost every where

where in the 2d part of the *Body of the Canon-Law*, viz. in *Extra. l. 2. tit. 28. c. 36, 43, 47, 48, 49, 51, 52, 53, 62, 63, 65, 67, 68, 69, 71. tit. 30. c. 3, 4. tit. 27. c. 22. l. 1. tit. 3. c. 1, 2, 3, 21, 26, 29. tit. 29. c. 15, 22, 27, 28. l. 2. tit. 1. c. 19. tit. 3. c. 2. tit. 6. c. 2. tit. 8. c. 1. tit. 13. c. 10*. There are like many forms of such Appeals and Commissions in *Hostiens. Summa. Col. 644, 645*, and in *Durand. Spec. l. 2. p. 858, n. 15. p. 859. n. 21, 22, 23, 24. p. 860. n. 28. p. 861. n. 34. p. 863. n. 39, 41, 43. & l. 4. p. 187, 195*. Those *Precedents* now cited in the *Decretals* are of great authority, seeing they are Canonized, and placed in the *Body of the Canon Law*, as examples of those *Rules*; These *Precedents* do shew all, and more than needs be found to prove in the *Petitioner's* case for the admittance of his appeal in Chancery. His appeals were interposed from pretended definitive sentences of the said *Lisburn-Delegates* as they were *Ordinaries*; and given at the *Petitions* or *Suits* of a Promoter and Proctor, who obtained *Decrees of costs* against the *Petitioner* upon their said *Suits*; and as upon civil matters, and in the first instance, and against a *Secular*, and who was not inhibited by the *Prerogative* clause of *app. rem.* nor by any *Law* in appealing from the said *Delegates*; But in most of the said *Precedents* Commissions of appeal were granted in the Chancery at *Rome* without contest or difficulty, as due to the Subject by common right from *Delegates* (if the appeal shew'd cause) yea upon second appeals, and in criminal causes, and from *interlocutories*, and from *Inquisitors*, and *Visitors* of *Regulars*, and where appeals were forbidden, as before hath been fully proved. There are many more such *Precedents* in those *Decretals*; The Dean of *Tulla* presented to *Pope Innoc.* the 3d a sett of *Articles* against his *Bishop*, charging him with *Dilapidation*, *Excommunication*, *Perjury*, and with other certain crimes; The *Pope* cited the *Bishop of Tulla* to come or send to clear himself; The *Bishop* appointed two of his *Clergy* to go and appear in his defence before his Holiness; these *Proctors* were false to their *Bishop*, and consented that the cause should be heard by the *Pope's Commissioners*, viz. the *Archdeacon of Paris* and other *Delegates*; the *Bishop* went to the *Delegates*.

and pray'd time to prove the falsity of the Proctors; the Delegates, *reputing* the Bishop's exception to be frivolous and delatory, rejected it; whereupon the Bishop appealed to the See Apostolick; the Delegates, notwithstanding that appeal, proceeded against the Bishop, and admitted witnesses against him, without any *litis contestation* or joyning in issue; and in his absence gave a sentence of deprivation against him; the Bishop complained thereof to the Pope; who could not believe that such learned and discreet men, as those Judges, could so proceed, untill he was fully satisfied of the truth of that complaint, and then he gave a new Commission to other Delegates, viz. the Bishops of Cabilon and Galata to examine the matter; but first declared that the sentence and proceedings of the former Delegates were null and void; Extra. l. 1. tit. 38. c. 4. Those proceedings and that sentence were nullities; not only because they were *attentes*, as made after the interposition of the appeal, which made those Judges to be private men, upon the suspension of their Jurisdiction, but because these Delegates acted and decreed contrary to judiciary order, and contrary to the tenour of their Commission, which required them to proceed according to the course of the Ecclesiastical Law, and thereby they likewise became as private men; they acted out of their course & bounds prescribed to special Commissioners; their errors were not only voidable but void acts, and their proceedings were as the intermeddlings of strangers in that cause: and tho' in this case the appeal was expedient to stop the actual force of those prejudicial proceedings & mischievous sentence, yet if it had been omitted, the *fatal*s of the appeal had not excluded the Bp. from the ordinary remedy of a Querel of Nullity, which he might at any time exhibit in the Chancery of Rome for a Commission of New Delegates to examine and declare those proceedings and that sentence to be nullities: which will bring in the proof of the 2d part of this Argument. Vix. That if the Petitioner's appeals from the said Lisburn-Commissioners had been prohibited, deserted, rejected, or had never been made, yet the Lord Chancellor of Ireland cannot justly deny to him a Commission of Delegates upon his Querel of Nullities against the said Commissioners.

There

THE Canon and Common-Law, the Statutes & customs of the Realm, the Resolutions of Ecclesiastical and Temporal Judges, Reason and Nature, and all which hath been shewn before in this Argument to prove, that a Commission of Delegates is due to the Petitioner in Chancery upon his appeals, may be repeated with more force for such a Commission upon his Querel of Nullities. The fatals, which often run out in appeals, have no place in such a Querel; *Fatalia, quæ currunt in appellatione, non habent locum in Querela*; Marant. Spec. p. 348. n. 114. Innoc. ait, quod licet appellatio sit deserta, tamen remanet Questio nullitatis, sicut remanet quum nullo modo est appellatum; Et Ego dico, quod simplex Querela nullitatis nullum habet tempus præfixum à jure; Baldus super Decretal. De App. p. 230. n. 9, 10. When the appeal is deserted, the appellant, as he is a querelant, cannot be excluded from his recourse to a Querel of Nullity; *Desertio appellationis non præcludit viam querelæ: Qui appellationem deseruit, potest recurrere ad querelam*; Marant. ut supra. *Deserta appellatione quis non prohibetur nisi remedio nullitatis*; Vant. De nullitat. p. 48. n. 37. The appellant, when he hath renounced his appeal, may have the remedy of a Querel and action for the revocation of the null acts made in Judicature during the appeal; *Si quis renunciat appellationi expresse vel facili, potest nihilominus agere ad revocationem attentatorum*; Lancelot. De Attent. p. 192. n. 1, 3, 4, 36. In cases, where the Law had prohibited the party to appeal, as post decendium, the Querel of Nullity lies; *Licet aditus non pateat appellandi post decendium, tamen per contradictionem vel alia juris remedia petierit revocari gravamen, & ei lapsus decendii non obsistat*; Sext. De app. c. 8: in fin. The clause app. remota, put in the Commission of Delegates, doth not prohibit the party (who is grieved by an iniquous and null sentence) from exhibiting & prosecuting the nullity by way of querel; *Cum aliqua causa app. rem. committitur, & sententia fertur iniqua, eam evacuari oportet, nec ei debet stari, si iniquitatem contineat manifestam*; Extra. De Sent. c. 9. Quando essemus in Iudice dato cum clausula app. rem. tunc quamvis stante dicta clausula quis non possit agere ad revocationem attentatorum ex privilegio, nec per viam appellationis; potest tamen non solum
per

per viam nullitatis, verum etiam per viam querela coram superiore ordinariis agenda; Lancel. De Assens. p. 410. n. 38, 39. The Querel of Nullity cannot be denied to stop the execution of a sentence given after two appeals in the cause, yea tho' the querelant had swore that he would not judicially complain of the nullity; and altho' the Statutes had excluded all nullities, if the nullity ariseth from incompetency of Jurisdiction; *Nullitas altiore requirens indaginem retardat executionem, quando provenit ex defectu Jurisdictionis; etiamsi ageretur de executione trium conformium sententiarum; vel quis jurasset non dicere de nullitate, vel omnis nullitas per statutum esset exclusa; Id. Lancel. p. 336. n. 100, 101, 104, 105.* Nullitas proveniens ex defectu Jurisdictionis nunquam excluditur, etiam stante statuto quod non possis dici de nullitate; Marant Spec. p. 272: n. 40. And this is not only the doctrine of the old Canon-Law, but also of the Reformation: *Sententia, quæ manifestum juris errorem continet, ipso jure est nulla; etiamsi ab eâ non sit appellatum, vel provocatio ab eâ sit deserta, vel appellans prohibitus sit ab eâ appellare; Reform. Leg. Eccles. p. 275, 276.* A null sentence may execute mischief and be a destroyer, but it can do no good; it cannot become a truth or *res judicata*; no superior Judge, no not the supreme Ordinary can confirm, or amend, or reverse a null sentence, but it is to be declared principally or incidently that it is, and was, in it self unlawful and a void act; that which is wanting cannot be numbred; *Sententia contra formam juris vel fines mandati lata non tenet; quod non tenet, ratum non potest haberi per consensum partium vel per confirmationem Papæ, as was adjudged by Pope Innoc. the 3d in the case of Matthæus de Rivariis in the Decretals, Extra. l. 2. tit. 30. c. 7. Non firmatur tractu temporis quod de jure ab initio non subsistit; Sext. Jur. Reg. 18; which is a Rule of natural Justice.*

There is a difference between a Querel of Nullity and an appeal from Nullity: both are complaints, and common rights of the Subject; both of them are indeed natural defences and cannot justly be denied: but the appellant, by consent and general constitutions, hath restrained his complaint within facts, and the certain terms of commencement and duration of appealing, out of

of which it is to be presumed that he had no just cause to complain, and that the pretended Nullity was a just judicial act, and therefore ought to pass into judgment; especially since it is reasonable and natural that strifes should have an end: yet the act had no foundation on the Law, altho' it was seemingly built on it, and hath only the appearance of a lawful act, but is to the party a real grievance; as long as that grief continues, the party may complain of it to his Head; he that is oppressed may, and ought, and will make his recourse to his Superior for relief; *Querela est, quando oppressus reclamatur, ut sibi per viam juris succurratur; Marant. Spec. p. 348. n. 114.* This Querel is a legal right, and not a supplication for a Review: The nullity is the greatest of injustices, and therefore the complaint of it ought to be brought to the fountain of Justice in the office of Justice to be search'd, annulled and justly punished; *Quæ contra jus sunt, debent atq; pro infectis haberi; Sext. Jur. Reg. 64.*

A Querel of Nullity or Iniquity, and a simple querel of grievances may be instituted as Originals and principal actions, and may be presented as such to the Chancery of the Pope, or of any Chief Governour of a Realm to be heard and determined by Ecclesiastical Commissioners as of Oier & Terminer: This is a Rule in the Canon Law, and it also shews the reason of it, viz. because every Supreme Ordinary or Chief Governour of a Kingdom hath there a concurrent Jurisdiction with every inferior Ordinary, as hath been shewn before; and that he is both an immediate and mediate Ordinary over all the Subjects; who, if they be grievously wronged, will immediately hasten to the Fountain & Office of Justice, *Cum Dm. Papa sit Judex Ordinarius singulorum, potest quilibet eam adire per simplicem querelam re integrâ; Extra. de app. c. 59. a. & c. 66. a. & l. 5. tit. 33. c. 23. Papa est Judex competens contra omnes non recognoscentes superiorem ratione injustitie manifesta & peccati; Marant. Spec. p. 368. n. 276. In Regno potest à quocunq; Judice appellari ad Regiam vel ad Magnam Curiam Vicariæ omisso medio; 377. n. n. 377.* The Pope's Legate is in Ecclesiastical causes as a Vice-Roy of a Kingdom is in Temporal Causes; and as Appeals, so Querels lie immediately to him; *Legatus Pape etiam*

etiam per simplicem querelam adiri potest, Extra. l. 1. tit. 30. c. 1. Papa vel supremus Princeps per viam nullitatis vel querela adiri potest: Ad Papam omissis mediis unusquisq; potest habere recursum; & quod dicitur de Papâ intelligitur de alio supremo Principe, qui inter subditos suos semper competens est; & si delegatus Principis cognoverit, solus Princeps vel is, qui ipsum delegaverit, nullitatem & gesta Delegati revocabit; Vant. de nullis. p. 33. Such Querels cannot be made in the first instance by the Subjects of Bishops to their Arch-Bishop, unless the Arch-Bishop had a Legatine Power, constituting him to be as the Pope's Ecclesiastical Lieutenant or Vicegerent within the Province assigned to him, for the Arch-Bishop, as such, is not the Ordinary Judge over the Subjects of his Suffragans, and he ought not to receive & hear their Causes, otherwise than upon appeals made to him; Archiepiscopus metropolitico jure non debeat causas audire de Episcopatibus vestris, nisi per appellationem deferantur ad eum: Legationis tamen obtenta universas, quæ per appellationem vel querimoniam perveniunt ad suam audientiam audire potest & debet; sicut qui in provinciâ suâ Vices nostras gerere comprobatur; as Pope Alexander the 3d expressly declared in his Decretal to all the Suffragan Bishops of the Province of Canturb. Extra. De Offic. Legat. c. 1. which was likewise declared as a Law in the General Council held at Lions; Archiepiscopus omissio appellationis articulo, vel per viam querela de causâ subditorum, partibus etiam ipsi consentientibus, non cognoscit; Sext. l. 2. tit. 2. c. 1. but any Subject, being grieved in any Diocese, may lawfully go immediately with his Querel to the Pope's Chancery for redress, at his option, either by a Commission of Delegates, or at a Tryal in the Consistory; De jure canonico licitum est adire Papam omissis mediis in primâ instantiâ, quia ipse Papa est Ordinarius Ordinariorum; & concurret cum omnibus Ordinariis; & poterit cognoscere de principali; omissio, id est, dimisso articulo appellationis: sic etiam legatus Papa omissio articulo appellationis potest cognoscere de principali causa: Clem. l. 2. tit. 3. c. 1. in textu & in casu, Appellans & Appellatus accedant ad sedem Apostolicam parati, ut (si nobis visum fuerit expedire) finito appellationis articulo, vel de partium voluntate omissio, procedatur in negotio

gotio principali; Sexti. De app. c. 1. Archiepiscopus non potest de
 principali negotio cognoscere, etiam de consensu partium, nisi finito
 articulo appellationis dicat bene appellatum & malè judicatum;
 quia tunc posset articulum principalis causa retinere: secus in
 Papa; quia potest retinere causam principalem, etiam si dictum
 sit, bene judicatum & malè appellatum; imò sine appellatione
 potest Papa inhibere Judicibus, ut non se intromittant am-
 plius de causa; sed ipsam causam anò cum partibus remittant
 ad Papam; Ibid. in Casu. Datur optio appellanti an velit coram
 eo, ad quem appellavit, litigare; vel Delegatum impetrare; Ibid.
 in glos. b. This is also the practice in the Chancery and Court
 of Rota at Rome; Si aliqua causa pervenit ad sedem Apostolicam,
 tunc articulus appellationis potest omitti de consensu partium, vel
 solius appellantis; et hoc tenet communiter Rota: In Antiq. Decis.
 798. And the law, custom and form of such Process in that
 Chancery and Court of Delegates are set forth by the Ex-
 cellent Speculator afore cited; Duas habet quis vias ad impug-
 nandam sententiam, sc. unam nullitatis, per quam petet sententiam
 nullam pronunciari; quia quod nullum est, amplius annullari vel
 rumpi non potest, nisi de facto: Aliam iniquitatis; per quam petet
 sententiam veluti iniquam, aliquam tamen, infirmari: Licet à
 nulla sententia non appelletur, poteris tamen semper sententiam di-
 cere nullam: sententia nulla per appellationem non efficitur aliqua:
 Viam nullitatis et iniquitatis possis quis in nullo libello simul pro-
 sequi: hoc Caria tenet, et sic pluries Durandus pronunciavit de
 mandato Pape; Durand. Spec. l. 4. p. 192. n. 11. Expedito ap-
 pellationis articulo, vel de partium voluntate omisso procedi valeat
 in negotio principali; omisso, locum habet coram Papà tantum, non
 coram aliis in causis Clericorum; Id. Ibid. p. 196. n. 4. and the
 Law hath prefixed no time, when the party grieved shall
 commence and conclude his Querel of nullity made to the
 Prince in his Chancery for a Commission to hear the Nul-
 lity; Cùm sententia dicitur ipso jure nulla, sine temporis præfina-
 tione retractari potest; intellige usq; ad 30 vel 40 annos; Id. l. 3.
 p. 302. n. 30. Omnis sententia, quæ nunquam transit in rem ju-
 dicatam, semper potest retractari, et de nullitate dici: sc. usq; ad
 30 annos et non ultra, nisi abi veritur periculum animæ; sc. in
 sententiâ

sententiâ Excommunicationis ; ubi agi posset in perpetuum ; Marant. Spec. p. 332. n. 153, 154. By all, which is shewn in this Article, it may be a demonstration, that if the Petitioner had omitted to make any appeal from the said Lisburn-Commissioners, this his *Querel of Nullities* cannot be denied in the Chancery of Ireland for a Commission of Delegates, by virtue of the said Irish Act of Appeal ; which declared, That not only Appeals and Provocations, but also other process, as *Querel of Nullity*, (wont to be made to the Bishop of Rome, or the See Apostolick, or to the Court of Rome) may be made to the Chancery of Ireland ; and upon such process the Lord Chancellor of Ireland shall, and must grant a Delegacy or Commission.

Seeing a simple *Querel*, without any appeal, may be such a process within the said Act, that the Lord Choncellor cannot deny to the Complainant a Commission of Delegates, Greater reason and right will oblige his Lordship to grant to the Petitioner such a Commission upon his *Querel of Nullities*, which hath the annexation, incidencey and accumulation of an appeal ; the grant in this case is clearly within the meaning and letter of the Act aforesaid, and within the texts of the Canon-Law, and the usages of the Chancery and Court of Delegates in Rome ; and is likewise accordant to the practice and form of the Commissions of Appeals, issued out of the Chancery of Ireland, and executed in the Court of Delegates in this Kingdom, as before is mentioned in pag. 45. And his Lordship will not, and he cannot take away or alter the forms of Writs and such Commissions, nor the course of those Courts ; the Delegates may, if they think fit, first hear and determine the principal matter and the querel of nullity before they examine the appeal ; for their Commission empowers them to proceed *omisso appellationis articulo* ; when the appellant insisted principally on his querel of nullity and iniquity, viz. *appellavit et aequè principaliter conquestus est de nullitate & iniquitate* : So it is in Rome ; Auditor in Curia Rom. super articulo gravaminis et negotio principali simul, ac etiam aliquando omisso articulo appellationis in dicto negotio principali procedere potest, ut quotidie practicatur ;

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præficatur; Vant. De Nullit. p. 511. And oftentimes the Papal Rescript directs the Delegates to proceed upon the Nullity together with the cause of appeal; *Concedi consueverunt Rescripta, quod idem Judex de Nullitate et negotio principali simul cognoscat; Id. Ibid. Si cognitio super nullitate habet altiorē indaginem, tunc posset simul cognosci super utraq; & pronunciari super eā quæ primò poterit terminari; Rota. De Bisgn. de Appel. decis. 6.* But where the Querel shows plainly the nullity, either on the face of the sentence, or out of the acts of Court, in that Case the Delegates must first discuss & determine the cause of nullity; *Si causa nullitatis habet promptam indaginem; sc. ubi est notoria vel apparet ex actis, tunc primò debeat cognosci de nullitate & pronunciari: ibid.* And when the appellant complaineth principally of the nullity or iniquity of the Judge, upon this complaint the Judge *ad quem* ought to have that grievance first argued; *Articulus appellationis interpositæ à gravamine discutitur per Judicem ad quem in appellatione vel principali causâ, cum in hoc casu iniquitas prioris Judicis principaliter arguatur; Extra. De app. c. 70. Sect. 4.* And in this case the Judge of the appeal may proceed against the Judge *à quo* without any *litis-contestation*, and in his absence, yea without any citation issued against him; because the Superior Judge ought *ex officio* to declare the iniquity or nullity of the Judge *à quo*, when it appears such to him; *Citatio non requiritur in Inhibitione decernendâ vigore appellationis à gravamine; si Judici, cui fuit causa commissâ, constet appellatum fuisse, & causam esse devolutam, & quod ipse Jurisdictionem habeat; Lancell. De Attent. p. 370. n. 222.* And if this Querel of Nullity hath the addition and advantage of an appeal from a definitive, it carries with it to the Superior Judge the force of a citation, and also of an Inhibition against the Appellate; *Appellatio à definitiva naturaliter suspendit, devolvit & citat; Id. Vant. p. 162. n. 79. Hoc est speciale privilegium in causâ appellationis, quod Judex altera parte absente procedere possit etiam lite non contestatâ; Extra. l. i. tit. 4. c. 4. glos. f.* And this Point was argued and decided in the Court of Delegates in Rome, as hath been intimated before; *Appellatio interposita ad Papam tres operatur effectus;*

fectus; primum, quia causam appellationis & negotium principale devolvit ad Curiam; secundum, quia pars appellata citatur ad Curiam; Tertium, quia appellans potest proseguere nullitatem sententiae latae, Rota. in Novis, Decis. 361.

The Canonists advise the appellant, if he can do it justly, to charge the inferior Judges (who properly are the appellees) with a nullity, and to bring it (tho' incidently & ad cautelam) into the appeal; that if he should fail in proof of the nullity, he may be preserved by the common remedy of his appeal, *Sic recte suadent omnes*—Olderdorp. *Pract. p. 279.* In this Case the form is prescribed by Speculator, *Talem sententiam, contra me latam, dico nullam; et si qua esset, ab ea ad sedem Apostolicam appello;* Durand. *Spec. l. 4. p. 192. n. 10.* And the Petitioner observed such form in his Additional appeal afore-mentioned. Although many Ecclesiastical Judges have decreed, That the dependency of a simple querel of nullities stayeth the execution of a null sentence; and that every judicial act, made after such querel by the Judge à quo to the prejudice of the Querelant, became an *Attentate* & a nullity; yet many have resolved and practised otherwise; as may be seen in Lancell. *de Attent.* p. 326: But all of them declare, that a Querel of Nullity proposed & prosecuted by way of an appeal (if this appeal be not expressly prohibited) shall have all the rights, benefits and privileges of a suspensive appeal; viz. It will cause *attentates* and demand the revocation of them; It will stop the execution of the sentence, and rescind it, and take away the presumption for the sentence as if it was just; *Omnes sine controversia admittunt, quod quando de nullitate datur incidenter & per viam exceptionis, executio impeditur, & aliquid innovari prohibetur;* Id. Lancell. p. 327. n. 7. *Executionis actus vigore appellationis interpositae habet quandam correlativevitatem cum ipsa sententia, ut eatenus illa impediatur, quatenus tollitur praesumptio quae erat pro ipsa sententia;* Id. p. 331. n. 44.

The Petitioner's Process or Querel of Nullities, as they are *Attentates*, is necessary to be presented and admitted in Chancery for a remedial Commission of Delegates; because these *Attentates* are to be heard and determined before there be any

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any discussion whether the appeal was valid & lay or not; and whether it was deserted, yea before any other Nullity be examined; for altho' a nullity be greater than any other injustice or iniquity, as hath been hinted, *Nulla major est injustitia quam nullitas*; Vant. de Nullit. p. 4. and therefore it is reasonable and just that the complaint of it and a mandate for the Tryal of it should be allowed in *Officina Justitiæ*; *Querela nullitatis est defensio oppressorum & commune est auxilium, & denegari non debet*; Id. p. 10, 115: yet this Querel above and before all other Plaints ought to be received in Chancery, and first of all to be heard in the Court of Delegates, because an *Attentate* is the greatest of Nullities. *Appellatione interposita nihil est innovandum, et Attentata ante omnia sunt revocanda* are maxims of the Canon Law: and when the said Irish Act 28 H. 8. c. 6. was made, it was the law and practice of the Chancery in Rome to receive the process or complaint of the infringement of those maxims; and the Lords of the Rota, tho' their Commission was principally to hear appeals, and incidently to examine nullities, which were accessory to the appeals; yet if *Attentates* were complained of, they stop'd all other processes to attend this privileged cause against *Attentates*, and to hear and determine it; *Est de stilo Domini, ut quando Commissio attentorum est in actis, materia attentorum præponatur etiam causa nullitatis*; Lancell. De Attent. p. 518. n. 157. *A lege est indultum Attentatis, ut quis super eis ante omnia audiat, quod privilegium sibi non est auferendum*; Ibid. n. 155. *Pendente causa attentorum ex illorum privilegio suspenditur & retardatur executio in causa principali*; Quinimo dixerunt Domini, quod judicium attentorum suspendit omne aliud judicium, etiam spoli; et retardat etiam judicium nullitatis, per decis. Rot. Ibid. n. 119, 120, 121, 123. *Licet regulariter accessorium soleat sequi naturam principalis, et causa attentorum videatur accessoria*; tamen ex privilegio attentorum, deserta appellatione regulariter super *Attentatis* procedi potest; ibid. n. 125. And this matter was settled in the Court of Rota, viz. that it was the privilege of the Appellant first to be heard against the *Attentates*; but if he pleased, he might wave that privilege, and prosecute

prosecute his Querel of Attentates together with his appeal and the principal cause; *Indultum est à lege appellanti quod super Attentatis ante omnia audiat: Appellans potest appellationem suam, & negotium principale, et causam attentatorum simul prosequi; tamen ad hoc non ardetur, nisi velit. In Novis Decis. 102.* And when the Appellant insists that the Attentates should be first heard and determined, and sentence is given for him, his expences shall be decreed and taxed for him, before the Court shall proceed and give sentence in the principal cause; *Expense Attentatorum taxari possunt ante sententiam in principali ferendam: Talis sententia ante omnia, antequam de principali cognoscatur, executioni est demandanda; Ibid. Decis. 99.* And as this was the Canon Law and Practice in the Courts of Chancery and the Rota in Rome, so the Reformers of that Law (upon the Restitution of the ancient Jurisdiction of Appeals and Attentates from those Courts to the like Courts in these Kingdoms) declared that the old Law and practice in this case ought to continue without any alteration: and it ought to be remembred, what hath been already mentioned, that those Reformers (amongst other Compilers of these Laws) were Temporal and Ecclesiastical Judges, and they well understood that old practice and law, and some of them were Makers of the Acts of Appeals, which provided for the Subjects in the Reign of K. H. 8th. *Qua attentantur contra et post appellationem, sive judicalem sive extrajudicalem, sunt ipso jure nulla: Innovata, post appellationem à diffinitiva, aut inter sententiam et appellationem, ante omnia per appellationis Judicem revocari debent; Reform. Leg. Eccles. De app. c. 42, 43.* And since the Reformation, this hath been and is the Practice of the Court of Delegates; *Judex ad quem non solum debet attemptata prius & ante omnia revocare, sed etiam Judicem attemptantem et partem appellatam, si ea petente facta fuerint, corrigere et condemnare utrosq; in expensis; Clark's Prax. tit. 265.* Si appellans vult procedere in negotio Attentorum, non est cogendus ad prosequendam appellationem seu ad procedendum in causa appellationis, nisi primò discussis attemptatis & eis retractis; saltem illud est primò & ante omnia petendum, ut videatur recedere ab eis-

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*dem, vel ne deferatur ejus appellatio, prosequendo causam attemp-
torum et omittendo prosecutionem cause appellationis; cum possit in-
simul procedi in eisdem; Id. Ibid.* So both old and new law and
Practice allows the Petitioner's Querel.

Attentates are *prejudicial acts* done to the Appellant, not
only when they are done after the *Inhibition* of the Judge *ad
quem*, issued and intimated to the Judge *à quo* and to the par-
ties concerned; ; but when *these* do any thing to his *preju-
dice* during the pendency of his appeal after it was interpo-
sed: especially (as in the Petitioner's case) if the appeal was
made from a *definitive* sentence, and if *that appeal* was not *pro-
hibited* by any Law, nor by the Prince's Prerogative-clause of
app. remota. The Petitioner's appeal, upon the interposition
and exhibition of it to the said *Lisburn-Commissioners*, had
the effects, and all the *rights* and privileges which the Law
gives to an appeal from a *definitive*: which *rights* have already
been repeated and *inculcated* in this Argument, as in *justice* to
the said appeal: and principally in *proving* that this appeal
did immediately *suspend* the Jurisdiction (what-ever the said
Commissioners pretended to have over the Petitioner) not only
in the cause of his Archdeaconry and Prebend afore men-
tioned; but also in any other cause or matter, which they, as
Eccles. Commissioners, had or might *institute* against him. The
Law was and is more *potent* than those men, as *powerful as
they were*. The Law convey'd to this Appeal such a *Sovereignty*,
as to make those *Commissioners on a sudden* to become two *private
persons*; and their *further shew of power* over him to be *meer
impotency*. This is one *distinction* which the Law makes be-
tween Ordinaries and Ecclesiastical Commissioners; *Quando
sumus in appellatione interposita à sententia Delegati, illa interpo-
sita in una causa suspendit Jurisdictionem etiam in aliis causis,
licet secus sit in Ordinario: et stante suspensione Jurisdictionis
subintrat consideratio Attentatorum*; Lancell. p. 223. n. 33. Ex-
tra. De app. c. 53. glos. a. Besides the Law says, that the Juris-
diction of Special Delegates (being *derogatory* to the Power of
Ordinaries) is *odious*, and not to be *favoured*, but ought to be
restrained, & in many respects is *void* in it self, which otherwise

would be only voidable in an Ordinary; *Marant. Spec. p. 77:* and in case of an appeal, *unprohibited*, the Jurisdiction of the Commissioners expired at their passing their definitive sentence; and that sentence became not only in it self extinct, but also all the favourable presumption appearing for it perished at the interposition of the appeal; and therefore the Law of *Attentates* (and not the Commission of Appeal or the Inhibition of the Delegates, in this Case) made the said prejudicial acts of the said Commissioners or of the Intruders into the Petitioner's Freeholds of his Archdeaconry, Prebend and Chancellorships, to be Nullities; *Appellatio suspendit et eximit appellan-tem a Jurisdictione Judicis a quo, etiamsi appellatio non sit superiori presentata vel commissa; unde necessarium et consequenter ante Commissionem appellatio operatur revocationem attentatorum;* which authority of the Law, being so material on this point, tho' cited before, may well be repeated in respect to Attentates.

So great is the Iniquity and Nullity of an Attentate, that (as the Canonists say) the Pope himself, without an express judicial cognizance thereof, cannot ratify even a seeming Attentate to be made a valid act; not only because it is a Nullity, but because such a confirmation would be repugnant to the rules of his Chancery and to natural equity, in taking away the just right of another. viz. The Pope's Grant, with the special clause of *certa scientia & mero motu nostris*, to present or collate an Archdeaconry to H. L. of which L. M. had the quiet possession for the space of twenty years under a Canonical title, and which was not vacant otherwise than by the pretended privatory sentence of Papal Delegates, from which sentence the Archdeacon has duly appealed: In this Case the sentence was of no force, because it was suspended & extinguished by the interposition of a lawful appeal, and the declaration of those Delegates, saying that the said Dignity was vacant by their said sentence, was an Attentate; and the Impetration of the said H. L. to the Pope for a grant and presentation of the said Dignity, the Letters Patents thereupon issued to the Ordinary of the Place to invest and install H. L. in the Archdeaconry, and his possession thereof, with the receipts of the emoluments.

luments and his execution of the Jurisdiction belonging to it, all of these acts were likewise *Attentates*; and no plenitude of Power can hinder the revocation of them; *Confirmatio Attentatorum per Principem facta nullo modo impedit quominus Judex, ad quem appellatur, possit procedere revocando Attentata; etiamsi talis confirmatio fuisset facta ex certâ scientiâ & motu proprio Principis, nisi Attentata confirmetur à Principe cum causæ cognitione ac partis citatione; et expressio appellationis et habita causæ cognitio & partis citatio scienter in Confirmatione hujusmodi inferantur; Lancell. De Attent. p. 289. n. 57, 58, 61, 62, 63. Papa per suam Concessionem nunquam censetur velle alteri auferre jus quæsitum; Princeps non præsumatur velle tertio præjudicare, etiamsi concessio fuisset facta motu proprio; quia hoc egisset contra Regulam Cancellariæ & jus commune De Jure quæsito non tollendo; Id. p. 287. n. 21, 22. Non valet declaratio Papæ in præjudicium tertii: In Commissione quantumcunq; generali nunquam censetur concessum quo possit tolli jus tertii; Rebuff. in Reg. Cancel. p. 528. Potestas absoluta, quâ Princeps posset tollere jus tertii, est potestas tyrannica, quæ veriùs dici potest Diabolica; procedit enim à potestate injuriôsâ, et est contra legem divinam, naturalem, civilem et canonicam; Id. p. 530. The Pope could not deprive the Subject of his right; It was the right of the appellant, that the *Attentates* should be heard and determined before the Judge *ad quem*; *Attentata per Judicem ad quem sunt revocanda, et non per alium Judicem*; Id. Lancell. p. 479. n. 34, 40. Neither the Pope or his Chancellor could deny the appellant a Commission of Delegates to examine those *Attentates*, or to hinder the Delegates from declaring the *Præsentation* aforementioned to be a *void act*, if it was granted upon the said pretended sentence of deprivation and vacancy, and if that *Præsentation* omitted to set forth in express words that the former Incumbent had appealed from that sentence, and that upon fully hearing of the *appellatory cause* before the Judges *ad quos*, and the appellant was present or cited to hear their determination, and that the first sentence was affirmed, and the appeal was declared unjust or unlawful: for otherwise the Pope's *Præsentation* or *Collation* was *ipso jure* null; as
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Pope Alex. 3^d declared in the like Case to his Delegates, *Collatio beneficii facta post appellationem ex probabili et verisimili causa interposita est ipso jure nulla*; Extra. De App. c. 1. The Pope had no lawful power or any title to present or collate the Archdeaconry aforesaid, unless it was vacant; *Beneficia non vacantia concedi non debent*; Ex Conc. Lateran. c. 2. Extra. l. 3. tit. 8. c. 2. and the said Pope likewise declared in a Case of the Archdeacon of Richmond, that both the Collation and Institution were nullities; *Archidiaconatus non vacans non potuit nec debuit in alium rite transferri; et qui contra justitia Regulam in Archidiaconum aliterius provehi se consensit, super eo duximus silentium imponendum*. Extra. Ibid. c. 7. yea Pope Galasius resolved, that the Intruding Successor into the Archdeaconry did as much as he could bury his Predecessor alive, and therefore for such unchristian and unhumane practice this Intruder was ipso facto excommunicated and deposed; *Institutus scienter in beneficium viventis ipso facto deponendus est*; Ibid. c. 1. And the Canonists and Divines in their Comment on this Text say, That if the former Incumbent was unjustly deprived, the Successor, tho' he was not party nor consenting to the unjust sentence, but was ignorant of it, yet if afterwards he knew of the appeal as duly interposed from it, and had still a pendency, and this knowledge came to him 30 or 40 years after he got title & possession of that Benefice, this Successor was an Usurper, and in Conscience and Law he was bound to quit the Living, and to restore the meyn profits of it to the former rightful Beneficer; Ibid. gloss. 1. for this Usurper carried with him the vice of the Attentate, and he must renounce the unlawful thing, and give satisfaction for the profits as aforesaid, before the said sentence of deprivation be retracted, or reheard, yea tho' the said appeal was extrajudicial, and depended only upon probable causes of grievance; as Pope Innoc. the 3^d decreed in the case of an Archdeacon of Canterb. *Qui extra judicium appellat ex verisimilibus et probabilibus causis, ne in possessione molesteur, si postea spoliatur, restituatur ante omnia in statum, in quo erat tempore appellationis amissa, cum fructibus medii temporis perceptis*; Extra. De app. c. 5 1.

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Si Archidiaconus scienter recipit rem, quā alter fuerit spoliatus, successit in vitium, *Ibid.* glos. i. Sufficit quod sit probabilis causa appellationis, sc. quæ si esset probata, legitima esset, licet non sit vera vel necessaria, tamen valet appellatio, *Ibid.* glos. k. and this unlawful sentence of deprivation and the usurpation aforesaid is in Law a spoiling of the appellant & a robbing of the former possessor; Spoliatus etiam a Judice, juris ordine prætermisso, ante omnia restituatur; *Extra. l. 2. tit. 13. c. 7.* And it was likewise decreed by Pope Celestin the 3d against another intruding Archdeacon upon a *Gravis Querela* made to him; the Pope commanded his Delegates to compel the Usurper to restore the Archdeaconry with the whole mean profits and also with all damages; *Archidiaconum ablata cum integritate restituere, damna plenarie resarcire, & de illatis injuriis competenter satisfacere compellatis; Ibid. c. 11.* And the Canon-Law is so strict against such Intruders, as to forbid any Advocate to plead for them; *Non est defendendus, qui viventis locum invadit; 7. q. 1. c. 10.* and Pope Greg. the Great deprived such an Archdeacon, and also declared that he was actually excommunicated, if he did not presently quit that office; *Eum, qui contra Justitiæ Regulam in Archidiaconatum alterius se probere consensit, ab ejusmodi Archidiaconatus honore deponimus; Qui si ulterius in loco eodem ministrare præsumperit, se participatione communionis sacra novit esse privatum, Ibid. c. 40.* Popes have revoked their own & also the erroneous unjust sentences of their Predecessors in beneficial Causes; *Etiam contra sententiam Papæ restituitur Ecclesia, Extra. l. 1. tit. 41. c. 5.* Pope Alex. afore-named, having deprived the Arch-Bishop of York of his right without due course of Law, by an inordinate sentence, acknowledged his irregular proceeding therein, as an *Attentate*; and wrote to the Arch Bp. that he might keep possession of that Right, notwithstanding that null sentence or Decretal; *Extra. l. 2. tit. 16. c. 1.* and the gloss g. on the place says, *Ex quo Papa revocat quod injuste fecit; multò fortius & alii hoc facere debent.* Therefore Popes may rise up in Judgment against Protestant Attendants, who hate that their prejudicial acts and nullities may be re-examined and reformed.

The Canonists prove, that an *Attentate* is a great Sin ; and therefore first of all things it ought to be examined and revoked : and consequently the Petitioner's Querel ought to be readily admitted in Chancery for a Commission of Delegates to hear and determine the Attentates afore mentioned, lest they should remain unpunished. *Attentare est delinquere, et Attentans eodem tempore offendit Jus, Judicem et Partem ; & Attentatorum revocatio concernit periculum animæ Attentantis ;* Lancellot. *De Attent.* p. 8. n. 83, 85, 91. The Attendant doth affront the majesty of the Law, he contemns the Jurisdiction of the Superior Judge, he robs the right of his neighbour, and he endangers his own Soul ; and therefore it is absolutely necessary that such a Querel be allowed, to call the Attendant out of the broad way to destruction, and that this revocation may be speedy, *In primis & ante omnia revocanda sunt Attentata* is a doctrine every where applied in Discourses of Appeals and Attentates. All Laws do declare that a lawful Appeal is a natural defence, but the Attendant, in slighting those Laws, takes away that defence. The same Law (which authorized the said *Lisburn* Commissioners to give a definitive sentence against the Petitioner) empowered him to appeal from that sentence ; both sentence and appeal may be erroneous and unjust ; but the Law, in favour of Innocency, presumes more for the appeal than for the sentence, as before has been proved. In all doubtful cases, whether or no the appeal ought to be admitted, the Judge *à quo* must obey the appeal, and stop his hand from proceeding any further against the appellant ; because the Law commands him so to do ; and he ought to obey the Law in all cases, unless in those where he is very certain that the Law was sinful, or that the appeal was unlawful. Every Soul, especially of Spiritual Commissioners, must submit to the higher Powers, not only for wrath, but also for Conscience sake ; as the Canonists apply that Divine Law to the Case of Attentates, *Attentans dicatur etiam transgressor juris divini*, Lancell. *De Attent.* p. 6. n. 61. These are certain commands of the Law, *Judex in dubio semper deferat appellationi ;* Hostiens. Col. 663. *In dubiis potius deferendum est appellationi quam sententia ; quia illud*

illud certius est, ideoque tenendum; Extra. l. 5. tit. 39. c. 48. in fin. glos. a. Appellationibus ad sedem Apostolicam interpositis tenemini humiliter & devotè deferre; Id. l. 2. tit. 24. c. 19. Appellatione ad Papam interposita nihil debet innovari; Id. De app. c. 55. Cum appellatur à diffinitivâ Judex non potest non deferre appellationi; Durand. Spec. l. 2. p. 849. n. 25. Appellationi, qua est rationabilis et legitima, debet Judex deferre, nam & jus eam admittit; Id. p. 854. n. 4. the Law does so favour the appeal, when it is made to the Prince in his Chancery or office of Justice, that the Pope's Chancellor ought to admit it, altho' it omitted some formalities prescribed by the Canon; Appellatio facta ad Papam tenet, licet fieri non debeat; sic de facto servatur, & Curia Romana talem appellationem recipit; Id. p. 840: n. 7. Appellatio male formata non excludit jus partis; Rota in Antiq. Decis. 156. An appeal de facto to the Prince is a lawful and valid appeal, and it suspends the Jurisdiction and power of the Judge à quo against the appellant; he becomes immediately under the Protection of the Prince, and no inferior Judge can touch him without an Attentate; as hath been often adjudged by the Lord's Delegates in the Rota, Appellans ad Papam censetur ita se submisisse Protectioni sedis Apostolicæ, ut inferiorum manus sint ligatæ, ita ut si quid faciant, censeantur attentare; Lancell. De Attent. p. 168. n. 15. Contra Proficientem ad sedem Apostolicam non est aliquid innovandum; Extra. l. 2. 29. c. 1.

Attentates which are committed after and against a lawful appeal made to the Prince, are high offences and of great aggravations; as the Canon-Law, the Rules of Chancery and the Practice of the Rota account them: and therefore they ought to be considered under the said Irish Act of Appeals. A complaint of them ought to be presently received in officina Justitiæ for a speedy redress thereof; iam, quàm; as well for redress of the grievance and offence done to the Prince and the Publick Weal, as to the particular interest of the appellant: the party is concerned in the whole and especially for the Head, and when the Head is harmed, it ought to be more affected for it than for itself. In Attentatis & illorum revocatione ver-
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salutis utilitas publica; & attentare est delictum, & Reipublica interest ut delicta non remaneant impunita; Id. Lancell. p. 8. n. 90. Attentans dicitur contemnere Judicem & lædere ejus majestatem, quæ consistit in honore; Idem p. 4. n. 31, 34. The Attendant invades the Prerogative of his Prince by assuming to himself the Dernier resort and the last appeal of the Subjects: He stops the fountain and the chanel of Justice, as much as he can; and shuts up the great Office of Chancery, which is to be always open for the course and recourse of complaints and remedial Commissions; and takes away the Jurisdiction of the Supreme Court of Delegates; Majestas Prætoris vindicatur in Attentatorum revocatione; et in illorum revocatione plus ponderatur contemptus Judicis quàm jus agentis; Id. p. 5. n. 51, 52. and the Law presumes that the Attentates were done as ill in despite to the Prince or Superior, as in malice & mischief to the appellant; and therefore an Attendant is reckon'd to be more detestable than a Robber; for the Attendant openly takes away the known rights of the Law, of the superior Judge & also of the Party; and therefore the Law hath provided 18 several punishments to be inflicted on him; Attentans dicitur odiosior & detestabilior spoliante; principaliter consideretur odium ipsius Attentantis, qui eodem tempore offendit jus, Judicem & Partem; Attentantium temeritas decem & octo pænis coercetur; Id. p. 7. n. 84, 86. and p. 531.

It is the undoubted right of the Subject, being aggrieved by Attentates, to make his complaint thereof to the Prince or Chief Governor of a Kingdom in the High Court of Chancery for a Delegacy, whereby Ecclesiastical Commissioners may hear and determine those Attentates: and it is likewise the Duty of the Lord Chancellor or Great Officer of Justice in that Court to grant and issue such Delegacy. The Statute of Appeals afore cited requires the Lord Chancellor of Ireland to grant a Commission or Delegacy to some discreet and well-learned persons within this land for the final determination of all causes and griefs, contained in the provocation and appeal made to the Lord Lieutenant or Chief Governour of this Kingdom, not only in the principal matter of the appeal and provocation, but also in all

all the circumstances and dependants thereupon. An Attentate (if it hath any substance) is a natural and necessary dependant upon an appeal; It is as an accident to the substance, and an accessory of the principal matter; *Attentata sunt accessoria ad ipsam appellationem et proveniunt ex natura ipsius appellationis*; *Id. Lancell. p. 409. n. 26, 27: Causa attentatorum dicitur accessoria, et incidens; et causa appellationis dicitur principalis*; *Id. p. 233. n. 33, 34.* The famous Author Lancellor, is very often and justly cited in this Argument, as one able and ready to explain the said Irish Statute concerning Appeals, Attentates, Nullities, Processes and Delegacies; and to demonstrate that the Petitioner's said Appeals and Querel were accordant to the Rules of the Canon Law and the Practice of the Courts of Chancery and of the Rota in Rome; and that the Petitioner's Case is within the Statute aforesaid. This Author, when that Statute was made, was a learned Advocate in those Courts, especially in *Sacro Rota auditorio*, as he tells the Reader of his *Treatise De Attentatis appellatione pendente*; and in *p. 11. n. 8.* he says that he had the favour of the Pope and Cardinals, and of the Judges of the Rota, to peruse and transcribe out of the Records and Manuscripts of that Court, and the Decisions and Resolutions of those Judges for completing that incomparable Book, which alone may answer all the objections that can be made in this case against the Petitioner. This Author fully shews, that the Pope's Chancellor or Keeper of the Signature was bound to grant Commissions of Delegates upon appeals and complaints of Attentates and Nullities, as *Rescripts of simple Justice*, unless in cases in which such Commissions were expressly prohibited by the Pope or in the text of the Law; *Except in those cases*, an appeal, interposed from a definitive sentence, did immediately exempt the appellant from the Jurisdiction of the Judge who gave the sentence, and also did suspend any force which could be in that sentence: upon the interposition of that appeal, intimated to the Judge à quo, he became as a private neighbour, as before hath been shewn; and he may lawfully be resisted as a stranger and as a spoiler, if by force of

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his said pretended Sentence he invades the rights of the appellant; for the authority of that Ecclesiastical Judge (especially if he be a Delegate or Surrogate) and all his high presumption against the appellant immediately fell under the said appeal: which in it self is an Inhibition; and the Sentence of the Law in this case, *pendente app. nihil innovandum*, hath more force than any sentence of any man, either the Judge *à quo*, who gave the Decree, or the Judge *ad quem*, who issued the Inhibition: *Judici volenti post app. interpositam exequi sententiam potest impune resisti; et ratio est, quia post app. Judex à quo efficitur incompetens, ex quo negotium devolvitur ad superiorem; unde sibi tanquam incompetenti impune non paretur: Et si Judex Spretà appellatione vellet procedere ad executionem sententiæ, et ad supplicium in causâ criminali, potest sibi resisti de facto: Id. Lancell. p. 211. n. 1, 2, 3. Appellatione ad Papam interpositâ alius non potest de eâ cognoscere, Ibid. n. 5. Judex à quo non potest se intromittere in appellatione ad Papam interpositâ, etiamsi sit Cardinalis; Id. Lancell. p. 228. n. 12, 13.* But tho' this resistance be lawful, yet it will be safer and more expedient for the appellant to prefer a complaint to the Prince in the Office of Justice in Chancery against the said Judge as an Attendant; not only that he may be reformed by some of the punishments prescribed for him in the Court of Delegates, as aforesaid; but that the Delegates may award to the appellant reparation; and in this Case the complainant's Suit will be very easy to him; for the Law and Practice of the Papal Chancery and Rota gives to the Appellant 29 privileges against the Attendants, which are reckon'd in the said Treatise of Lancell. p. 508.

It hath been before so fully proved and so often inculcated in this Argument, shewing by the Rules of the Common and Canon Law, by the decisions of Ecclesiastical Judges, and by the Resolutions of above 20 Temporal Judges cited pag. 67, that a lawful appeal does immediately suspend a definitive sentence of deprivation given by Ecclesiastical Judges against a Clergy-man in his Benefice, there needs no proof that detrimental acts made against him during his appeal were attentates;

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attentates; Appellatio quoad effectum Attentatorum tunc pendere dicitur quando illa legitime interposita sit Judici & parti intimata; & ubi appellatio suspendit, omnia gesta post eam revocantur tanquam Attentata; Id. Lancell. p. 178. n. 8, 13. The Judge of the appeal, upon the exhibition of it, ought immediately to examine and revoke the Attentates complained of; for it is his Office; his Oath and the Law requires him so to do; Innovata post appellationem à diffinitivâ sententiâ interjectam debent semper (exceptis casibus in quibus jura post sententiâ prohibent appellare) ante omnia per appellationis Judicem penitus revocari; Sext. l. 2. tit. 15. c. 7. ad officium Judicis ad quem spectat cessare, revocare, & annullare Attentata post sententiâ diffinitivâ, etiam post appellationem; et hoc priusquam incipiat cognoscere de meritis causæ appellationis, an bene vel male judicatum fuerit, Ibid. in casu. Commissions are granted of course in the said Chancery for the revocation of Attentates; Signatura solet concedere Attentatorum Commissionem super illorum revocatione; Id. Lancell. p. 519. n. 161. The Superior and Judge of the Appeal, not only may, but must revoke the Attentates. Revocationem Attentatorum non solum facere possit, verum etiam ante omnia tenetur; Id. p. 520. n. 177. and p. 521. n. 211. Judici imposita est necessitas revocandi Attentata, Id. p. 479. n. 33. Juxta & Superior ad quem appellatur, in tantum tenetur ante omnia revocare Attentata, quod aliter faciendo diceretur inferre injustitiam, Id. p. 477. n. 1, 2, 3. Juxta, cujus fuit læsa majestas, in omnibus propter contemptum juris vel legis in pœnam Attentatis, Ex officio suo puro & mero potest attentata revocare; etiam ubi ad instantiam partis Attentata revocari non valent; Ibid. n. 7, 8. No lapse of time lies in Chancery against the complainant to hinder the revocation of Attentates, especially if he proposeth them as nullities; Attentatorum revocatio, si petatur per viam nullitatis ordinariæ, duret perpetuo; Id. p. 422. n. 89. Revocationi Attentatorum nullo tempore præscribitur; Ibid. n. 63. Attentata regulariter dicuntur nulla; Ibid. n. 70. Whilst the appellant is complaining and prosecuting his complaint against Attentates, he can suffer no detriment in his appeal, Fatalia non currunt appellanti super Attentatis procedendi; Rota

Rota in Nov. Decis. 102. Id. Lancell. p. 211. n. 6. The party (who suffers under Attentates and sues for the revocation of them, as the Petitioner in his Case) needs to prove only these three things, 1. That there was a sentence of deprivation of his Archdeaconry given against him by Ecclesiastical Judges; 2. That he duly appealed from that sentence; 3. That after and during his appeal the said Judges or other third parties have done such acts prejudicial to his interest in the Archdeaconry or in other of his Benefices or Ecclesiastical offices; *In Attentatis app. pendente tria sunt probanda, viz. diffinitum fuisse, appellatum & attentatum; Id. Lancell. p. 466. n. 2.* But the Lords of the *Rota* and other Canonists have decided that only the two latter of those requisites were necessary; *Duo tantum necessario sunt probanda ad victoriam causa Attentatorum; viz. Litis pendentiam & Innovationem; Ibid. n. 3. Communiter tenet Rota quod facta fide de appellatione & etiam De Attentatione, immediate possunt revocari Attentata; Ibid. n. 16.*

In this point of appeals and Attentates, somewhat of repetition, by way of inculcating, may be allowed or excused in this matter being of great moment concerning the Petitioner's property, liberty, and the exercise of Religion: for all these rights and privileges of the Subject are taken away by sentences of Suspension, Interdict, deprivation and excommunication. It hath been shewed before in pag. 149. That an appeal made from the definitive sentence of Delegates in one cause suspends their Jurisdiction over the appellant in all other causes relating to him; Therefore the said *Lisburn* Commissioners, having first by their pretended sentence deprived the Petitioner of his Archdeaconry as aforesaid, became incompetent and Attentants in giving their subsequent sentences of Suspension, Interdict, Sequestration and Excommunication against him, after an appeal had suspended all their judiciary power over him; whether the appeal was interposed by himself or by the law in favour of the Subject. The Jurisdiction of Delegates is not favoured by the Law; *Ordinarius dicitur habere Jurisdictionem favorabilem, Delegatus verb. odiosam; Marant. Spec. p. 81. n. 30: Non creditur quis Delegatus, nisi delegationem probet;*

probet; nisi de mandato sedis Apostolicae certus extiteris, exequi non cogaris quod mandatur; Extra. l. 1. tit. 29. c. 31. Their power expired at the passing their definitive sentence; *Post definitivam executioni mandatam expirat Delegati Jurisdictio; Ibid. c. 11.* Besides the law in favour of Innocency does presume that the appellant was unjustly and really grieved by the said sentence; because otherwise, if the appeal was not just and lawful, he knew that the superior Judge would grievously punish him; *Injuste appellans omnino est puniendus, 2. q. 6. c. 27.* The Law likewise presumes that the Judges, especially Delegates, might easily omit the order and forms of the Law in their proceedings and sentences, and that they might be partial and enemies to the appellant; and therefore it allows the forms of appeals, which usually chargeth the Judge *a quo* with errors, injustice and iniquity in his proceedings; and in his sentence with favour to the adverse party, and prejudice and hatred to the appellant, *in favorem partis A. et in odium & prejudicium partis mei querelantis*; wherefore it might seem unreasonable and unnatural that an enemy should be appointed and allowed to be a man's Judge; and it cannot be imagined but that he, who without just cause has done you a great mischief (unless he heartily repents of it) will, if he can, do you another and a greater injury; for the Law so presumes; *Quod suspecti & inimici Judices esse non debeant, ipsa ratio dicitur: nam quid gratius et amabilius dare quis inimico potest, quam si ei ad impetendum commiserit, quem ladere forte voluerit: Quodammodo naturale est suspectorum Judicum infidias declinare, et inimicorum judicium semper velle refugere: 3. q. 5. c. 15. Extra. De App. c. 41.* In this case the Law allows the Subject, upon his appeal from the Ordinary in one cause (when he is prosecuted before him in another cause) to except even against this Ordinary, his own natural Judge, and to refuse him as incompetent by reason of suspicion: and he may appeal agen from him to his Superior for that reason, or he may require the Ordinary to commit the cause of suspicion to indifferent arbiters and an Umpire; and upon proof of the suspicion, these are to be Judges of the principal matter: *Quando est appellatum a Judice, Ju-*

de pendente appellatione redditur suspectus appellanti, tam in illa causa quam in omni alia; & potest recusari; Marant. p. 344. n. 61. Qui se Judicem habet suspectum, coram eodem causam suspicionis assignet; & ipse cum adversario, vel cum Judice arbitros eligat: Et illa causa probata, de recusatoris assensu, persona idonea committat negotium recusatus, vel ad superiorem transmittat; prout Ex Concil. Lateran. c. 48. in Extra. de app. c. 61. But the Delegate Judge, altho' he may be refused as suspected, may not refer the cause to arbiters; because he hath no such power as the Ordinary had, and his Jurisdiction ceased over the party upon his giving the definitive sentence and awarding execution against him; *Judex Delegatus non potest illud negotium alii committere invito recusatore; imo statim suspensa est potestas ipsius; Ibid. glos. i.*

The Petitioner, being deprived of his Archdeaconry by the *Lisburn*-Commissioners as aforesaid, had just and manifest cause of suspecting them as his enemies; the iniquity of their sentence of deprivation is visible on the face of it: Nos—*præfatum Lemuelem Mathews Archidiaconum Dunensem propter ea quæ per eum Commissa, permissa sive neglecta fuer. quatenus Archidiaconum Dunensem & Curam animarum in singulis Rectoriis & Parochiis ad præfat. Archidiaconum annexis habentem à dicto Archidiaconatu unâ cum omnibus et singulis Rectoriis—omnibusq; suis juribus, commoditatibus—deprivandum et prorsus amovendum fore de jure debere pronunciamus, decernimus et declaramus, prout per præsentis sic deprivamus et amovemus—Dictumq; L. M. in expensis hujus litis ex parte officii condemnamus.* The sentence of deprivation, bereaving a Clergy-man of his Living, is said by the Law to be cruel and bloody, as the taking away his life, *Sententia deprivationis cruenta est*, and is as a capital punishment, *Hob. 290*; and when it is inflicted without cause, or upon an unjust, uncertain and subdulous cause, such sentence is certainly abominable and intolerable. A sentence of deprivation *propter Commissa, permissa sive neglecta*, for general and disjunctive causes does imply malice and fraud, and a *mischievous trick* of the Ecclesiastical Judges; for it may contain felony, and the temporal Courts cannot redress the Innocent and

and condemned Subject; 3 *Bulstr.* 46, 49, 317. *March.* 153.
 1 *Ventr.* 305. 2 *Rolls.* 219. It is a sentence *mala fidei*; 2 *Jones.*
 14, 15. All honest men, as soon as they look upon such a damna-
 tory sentence, will say, this is repugnant to the nature of Justice
 and to the integrity of Judges; Bishop *Barlow's Cases*, p. 55.
 The design, in imposing such fraudulent sentences on the people,
 must be that strangers might suspect and his enemies may
 suggest that this Priest was so condemned for some hainous
 crimes not to be named, thereby rendring him most odious in the
 world, which is governed by Opinion: tho' indeed it be uncer-
 tain whether the things were committed, permitted or omit-
 ted by him; whether they were crimes or faults, within or without
 the Articles. An uncertain cause is no cause: A general cause
 can never possess any rational person with the truth of the
 Action; and he can no more judge of the Law relating to
 the fact, unless the fact be agreed on, than to know an Acci-
 dent which has no Subject; *Vaugh. Rep.* 137, 138. 2 *Mod.*
Rep. 163. *Generale perit in incertitudine*, 2 *Jones.* 14: But altho'
 the Temporal Judges do know that such sentence is bad and
 null, 3 *Bulstr.* 46: yet they cannot examine it in their Courts,
 as hath been shewn before in pag. 111. No travers may be
 admitted to the Certificate of a Bishop that A. was deprived,
Dyer 116. No Commission can be granted to Temporal
 Judges as such to enquire of the proceedings of Ecclesiastical
 Judges; 18 E. 3. c. 6. *Examen est aliud, & jura sunt separata*, as
 aforesaid. Therefore the necessity of Justice requires an Eccles.
 Commission of Delegates, least an iniquous sentence and at-
 tentate should remain unpunished, until it be accounted for
 in another *Officina Justitia*, where Justice is not to be bribed
 by money, fear, power or favour; and where divine *Nemesis*
 will not be mockt. This certainly concerns Spiritual or Ec-
 clesiastical tribunals and sentences; and this is no *jeasting*
matter, or staying till that day, *Dies ira Dies ille*: It is a Rule
 of eternal Justice, as well as of the Canon Law, *Peccatum non*
remittitur nisi restituatur ablatum; *Sext. Jur. Reg.* 4: and Di-
 vines say That it is as sure as God is true, without restitution
 Repentance can never be true, and that without true Repentance it

is impossible to be saved; Mead's Works, p. 212. Pope Innocent admonish'd his High Commissioners to search their own Consciences whether they had exceeded the rules of the Law, or the tenor of their Commission, and to Judge themselves, that they be not judged of the Lord; *Quoniam apud Judicem districtum, in quâ mensurâ mensi fueritis, remetietur Vobis*; Extra. l. 5. tit. 1. c. 17. It will be more tolerable for the said sentence of Deprivation, now to be examined before the Delegates, than in the last great Court of Justice; They may give a mild sentence as in A.D. 1681 in the behalf of D. Worth against his adversary; *Præfatum Gulielmum King, partem appellatam, in expensis in omni instantiâ, propter contemptum seu contumaciam suam in præmissis condemnando*: but those Delegates in that sentence expressly specified the cause why they condemned him. The sentences of deprivation, given by the Ecclesiastical Commissioners of K. Edw. 6th against Bishops Bonnor and Gardiner afore-mentioned, did express the particular offences, with which they were charged, and which were the causes of those sentences, Fox's Martyrol. Vol. 2: p. 697, 739. And so in Gardiner's case, 5. Rep. 2. and it always was and is the general practice of Ecclesiastical Courts in these Kingdoms to specify the cause or crime in the sentences of deprivation in criminal causes, especially when those sentences were given by way of Inquisition; *In conclusione sententiæ pronuntiandum est, Reum tali tempore tale crimen viz. crimen objectum & probatum commisisse*; Clark's Prax. Eccles. tit. 319. *Non sufficit sententiam condemnatoriam esse, nisi in eâ desente res exprimantur ob quas Judex Reum condemnat*; Reform. Leg. Eccles. p. 273. *Continuè servatur de facto quod inferatur causa in sententiis criminalibus; in quibus Judices malefactorum ponunt—Quoniam talis accusatus sit de tali maleficio, & nobis constat per testes vel per ejus confessionem, quod illud maleficiu commisit, idè illum condemnamus: Illi sunt in observantiâ, et ab ipsâ non recedimus*; Jul. Clar. Prax. Crim. p. 686. The Canon-Law likewise requires that the privatory sentence must express the crime or cause; *Per sententiam latam super crimine non est quis privatus beneficio, nisi hoc sententia exprimat*; Socin. Jur. Reg. 244, n. 11. Djaz. Prax. Crim. c. 123. Bald.

Hostiens. Col. 609. *Zerola Prax.* Tom. 2. p. 220. Marand. Ord. Jud. Tom. 4. p. 294. Bis. Rota De Sent. Decis. 5. Rebuff. de modo amitt. Benef. n. 64. De re incerta in iudicium deducta certa profecti non poterit sententia; Fleta l. 6. c. 50. n. 10. The Court of Parliament is the highest Court of Justice, and gives example to all inferior Courts, yet it cannot attain a man of High Treason by general words, but by words specially expressed in the Act, and penned plainly and clearly, and not cunningly and darkly; Hob. 270, 291. 4. Inst. 39, 42, 332. If uncertain causes may be admitted in sentences of deprivation, in what a condition should all men be? Vaugh. Rep. 137. Grave satis est & indecens, ut in re dubia certa detur sententia; 11. q. 3. c. 74. Nunquam deponi debet quis nisi expressum sit pro quo, & crimen sit accusatione & damnatione dignissimum; 81. Dist. c. 1. glos. p. Ubi factum est ambiguum, tunc nunquam ferenda est sententia in alicujus præjudicium, 33. Dist. 7; gl. y. Nullum sit iudicium nisi rationabiliter habitum; 2. q. 1. c. 7. Incerta et dubia judicari non possunt; Ibid. c. 12. Iudex incertam sententiam ferre non debet; nemo Pontificum incerta judicare præsumat; 30. q. 5. c. 9, 10. So it was said in the Canons called the Apostolick, and in the Council at Antioch, that if a Bishop, Presbyter or Deacon be deposed, the deposition must be just and for certain crimes; Si quis Episcopus, Presbyter vel Diaconus fuerit justè pro certis criminibus Depositus—Extra. l. 5. tit. 27. c. 1, 2. The sentences of deprivation, given by Act of Parl. 25 H. 8. c. 5. against the Bishops of Sarum and Worcester, did specify the causes of that deprivation; Burnet's Hist. of Reform. Part 1. p. 148. and Collect. p. 121. The several sentences of deprivation past against Bishops, Deans, Archdeacons, &c. by Ecclesiastical Commissioners of Q. Mary and Q. Eliz. did express the causes or offences in those sentences; as may be read in the Remarks of Harmer or Wharton upon that History, Specimen. p. 131, 133. The sentence of deprivation given against the Bishop of St. David's A. D. 1699 particularized the several enormities for which he was deprived; as may be seen in the Registry of the Court of Delegates in Doctors Commons, London. True it is, there have been sentences of deprivation given for no

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cause, or which is worse, upon a double iniquity or equivocation, as for ambiguous, unjust and fraudulent causes; but they have been declared nullities, as repugnant to the sincerity of a Judge. Thus Pope Clement the 5th in the Council held at Vienna, having examined a famous sentence of deprivation, upon it's manifest iniquity adjudged it to be a void act; *Patebat ex causis illius sententie astruere evidentiam nullitatis*; Clem. 1. 2. tit. 1. c. 2. *Ex causa facile deprehenditur iniquitas sententie; et ideo datur consilium ne causa exprimat* ibid. gloss. b. and so Pope Innoc. 3d told his Delegates, upon an appeal made from them to him, *Res debet esse specifica, non confusa obsecritas et equivocatio*; Extra. 1. 2. tit. 3. c. 2. *Judex non debet ferre sententiam super incerto*; ibid. gloss. a. The forms of privatory sentences in criminal causes express the crime, as appears in *Hoplen's Sum. Col. 644. 645. Durand. Spec. l. 7. c. 497. n. 500. Id. l. 4. c. 187. 195.* Pope Clement the 4th deprived seven Bishops at once; Dom. Clem. Papa 4. *Publica tunc sententia depositionis in undecim Episcopos tum ibidem presentes, pro eo quod adhaeserant Manfredi Principi Tarentino—Forma hujus sententie est. Quia nobis evidenter & legitime constat re tale crimen non solum grave, verum etiam damnable est et damnosum, idcirco te sententialiter—Id. Durand. l. 3. p. 10. Debet in sententia declarari qualitas commissi criminis*; ibid. n. 7. The offender must be punished according to the quality of the offence; Canon 27th. If the penalty be not congruous to the offence, the sentence is void; *Shore's Cases. p. 55. In sententia condemnatoria delicto pena conformis esse debet, juxta illud Deut. 15. Pro mensura delicti erit & plagarum modus. Ber. Fran. Crim. tom. 4. p. 302. Pena debet commensurari delicto, et secundum gravitatem delicti imponatur*, Lynw. p. 161. n. 1. *Pena debet poni in eo in quo deliquit*; Id. p. 325. f. *Nam persona Ecclesiastica amercietur nisi secundum quantitatem delicti*, Magna Charta c. 14. Altho' all this be according to the instinct of nature and the dictate of reason, and is confirmed by the authorities of Law and the Resolutions of Judges, and is supported by precedents and usages of Courts; yet some men, being puffed up with a Papal Bull or Commission, were so conceited as to think,

think, That all their solemn acts and decrees must be taken as truth upon presumption of judiciary authority, and that they need not express any cause in any of their Sentences, because in civil actions it was not requisite. *Propter auctoritatem iudicariam presumuntur omnia solemniter acta, errorum iudicum esset unus rhabdus: Et prudenter non consueverunt exprimere causam in sententia, ne forte error causa haberet omnino.* Bald. *super Decretal. De Sent. p. 220.* But this Author sets down eleven exceptions from that Rule or Opinion; and amongst them he expressly declares that the Judge must specify the cause in his sentence upon criminal actions, and also when he proceeded by way of Inquisition, or to Excommunication, *provis Ibid.* And these exceptions have been allowed as the rights of the Subject in the Civil and Canon Law, *Barth. Socin. Jur. Reg. 244. n. 11. Laufranc. Pract. p. 389:* and as to the presumption aforementioned, the appeal or Querel of Nullity strikes down the force and high conceit of it; This is the judgment of the 4th General Council of Lateran, *Non presumatur pro iudicis processu, nisi quatenus in causa legitimis constiterit documentis; Extra. 1. 2. tit. 19. c. 11.* The presumption in this case ariseth from the silence of the party grieved, in not complaining of the error or nullity of the sentence; *Pectores non aliter possunt sententiam, nisi eos offenderint recte lata; Ibid. gloss. b.* and it is a Rule in all Laws, That a sentence, which contains manifest iniquity, is a void act, and by it's own pernicious force instantly destroys it self.

It will be worth while and patience further to demonstrate the iniquity and nullity of the said sentence of deprivation, that the *Officina Justitie* may see the necessity of issuing forth a Commission of Delegates, whereby truth and Justice may prevail; that the unlawful Receivers & deprivors of other men's just rights may be convinced of their errors & repent; that righteousness may take it's own place, that the oppressed may be relieved & restored; and that the mouth of all gainfayers may be for ever stopt; but principally that the publick may be delivered from vengeance from above, at the cry of the complainant to Heaven for lack of Justice here, denied.

denied or delayed ; and to prevent his morning Prayer, *Awake and stand up to judge my quarrel ; avenge thou my cause, my God and my Lord : for they have privily laid their net to destroy me without a cause, yea without a cause they have made a pit for my soul ; Psal. 35. 7, 23.* The Temporal Judges in such Cases sometimes recite texts of Scripture ; The whole Court of B.R. resolved, that by the Laws of God none ought to be imprisoned *without cause expressed* in the return ; and that the words were *uncertain and unsufficient*, when the High Commissioners had committed one God for speaking *diversa opprobriosa verba* ; 3 Bulstr. 109. That to take away a man's livelihood, *especially without cause*, was against the Law of God ; and surely our Law is not against *that Law* ; and a sentence, *contrary to these Laws*, was void ; *March's Rep.* 192. The Scripture discountenanceth men *being made transgressors* for a word ; 1 Mod. Rep. 233. Ye shall do *no unrighteousness* in judgment, but in *righteousness* thou shalt judge thy neighbour ; *Levit. 19. 15.* Judge not according to appearance, but *judge righteous judgment*, *Job. 7. 24.* There is a *certain subtilty that is fine*, but it is *unrighteous* ; and there is that *wresteth the open and manifest Law* ; yet there is also that is *wise*, and *judgeth righteously* ; as the Lord Ch. J. renders a *Text* of *Ecclus.* in *Hob. Rep.* 125. It is a *captious injustice* to stick so in a word as to *deprive a man of his due* ; *Id. p. 58.* A just sentence must shew two things, *viz. Verity and Certainty* ; and if it wants either of these, it is not good ; *March. 153.* The Statute *Pro Clero* expressly declares *That no man of holy Church shall be put out of his temporalities without a true a just cause* ; and according to the Law of the Land, 14 E. 3. c. 3. The Irish Act of Uniformity authorizeth ABps, Bps, Archdeacons, &c. to take *accusations of things and offences* done within the limits of their Jurisdiction and committed contrary to the said Act, and to punish the *same* by deprivation—in *like form as heretofore had been used in like cases by the Queen's Ecclesiastical Laws*, 2 Eliz. c. 2. The said *Lisburn Commissioners* empowred the Commissioners to exercise Ecclesiastical Jurisdiction *by the Ecclesiastical laws, customs or authorities which might lawfully be used and exercised within the*

the Dioceses of D. and G. aforelaid according to the Laws, Ordinances, Customs and Statutes in force in this Kingdom of Ireland; and the said Commission required the said Commissioners to hear, determine and punish the Ecclesiastical offences of Ecclesiastical persons of the said Dioceses according to the course of Ecclesiastical Laws of force in this Kingdom, and to award upon the offences such condign punishment against the offender by—deprivation, as heretofore hath been used in the like cases by the Ecclesiastical Laws of this Kingdom. From the premisses in this and the precedent Paragraph the conclusion must follow demonstratively, *veritate inevitabili*, that the said sentence of deprivation, given against the Petitioner, was and is a notorious Nullity. It will be easy to compare this example of deprivation with those Rules & Cases afore-mention'd, and shew the contradiction of this sentence to the humane and divine Laws. The first privatory sentence given against man did express the cause in it, Gen. 3. 17. and the last damnatory sentence, against the cursed, will likewise express the cause, Mat. 25. 42: It seemed unreasonable even to a heathen Judge to take away a man's liberty and not with all to signify the crime laid against him; Acts 25. 27. To take away a man's livelihood is a greater punishment, especially upon a Clergyman, than to take away his liberty; *Sententia deprivationis totum conficit hominem*; Reform. Leg. Eccles. p. 158. His holy orders tie up his hands from working, *he may not dig*; and if he be excommunicated, *he may not beg*; none ought to relieve him, even with alms of the Church; *Excommunicato in nullo sit providendum, qui contemnit claves Ecclesie*; Extra. l. 2. tit. 28. c. 53: in fin. & glos. f. Many innocent men have been deprived of their freedoms and freeholds, of their livelihoods and also of their lives, without a cause; yea without a cause they have been destroyed; the will of their Judge was the law; —*pro ratione voluntas*: But such judgments were unrighteous and void: In Gawdrice's case aforelaid the special verdict was, *If the deprivation was not warrantable by law, it was void*. If any judgment be given by any of the King's Ministers contrary to the points of the Great Charter, it shall be holden for none; 2 Inst. 46, 56.

It must be a *nullity*. In some copies of that Charter, the cap. 29. is read—*Nullus liber homo destituatur nisi per legem terræ*. The Statutes of K. Ed. the first confirmed that chapter, and enacted, That it shall not be henceforth as formerly, that the King by evil Counsellors should seize the Temporalities of Prelates without cause; 1 E. 3. Sess. 2. c. 2. An Archdeacon in the Law is styled a Prelate, because by common right he hath Jurisdiction; Lynn. p. 43. d. and it would be a repugnancy to the Law to disseize him of his Ecclesiastical freeholds without cause; but it would be a greater contrariety to the Law to deprive him for the unreasonable & malicious cause of a Judge's contrivance; *Causa incerta non est rationabilis*; 5 Rep. 58. in *Specor's Case*: A general allegation is not sufficient to deprive an Incumbent of his Benefice, *Ibid*. In *Green's Case* 6 Rep. 29. It must be shewn in particular for what cause *Baker* was deprived, *per qd default it est deprive*, *Dyer* 328, 346. The sentence of the Ecclesiastical Judge must shew the cause in certainty when the institution is refused to the Clerk, as when the destitution is decreed against him; the cause must be certain and sufficient, and the charge must be special; as was resolved by the Temporal Judges and was also confessed by both sides, in *Specor's Case* aforesaid. The matter ought to be alledged in a good sentence; for tho' the matter in truth may be sufficient, yet if it be insufficiently alledged, the Plea wanteth matter; 13 Rep. 46. A good sentence subsists upon the material cause; the High Commissioners might deprive, but the deprivation must be for a good cause; 1 *Jones* 393. a sentence given for an uncertain cause is a treacherous sentence, 2 *Jones* 14. *Simplicitas amica legibus, sed dolosus versatur in generalibus*, 4 Rep. 5. Uncertainty is the mother of contention, and the concealment of the cause in a condemnatory sentence is a mark of fraud; 3 Rep. 8. an uncertain cause shall not be construed by intendment, *Raym.* 103. The cause must be known, before it be adjudged to be true and just; It was not well done by Church men, and Ecclesiastical Judges to bolster up their bad sentence of deprivation by *debito modo amicus*; 3 *Balsh* 46. but much worse to support their sentence by a subdolum cause; God forbid that mens liberties and properties should depend

depend on uncertainties; 6 Rep. 42. 12 Rep. 56. The cause must appear *specifically* in the sentence; and the cause must be legal; it must be certain and sufficient, and be *exposed* to the judgment & to the *judicial eyes* of the superior Judges, and of all men concerned in it; no Court, no man can *satisfy his reason and conscience* concerning a sentence of a Judge, until he knows the reason of it; Barlow's Cases, p. 17. *De non apparentibus & de non existentibus eadem est ratio*; what does not appear to be, must be taken in Law, as if it was not; Vaugh. 169. *Generale nil certum ponit, nihil implicat*, 2 Rep. 33, 34. words uncertain are void in Law; *miseria est servitus ubi jus est vagum*, 6 Rep. 42. In *Hankeridge's Case* in 12 Rep. 130 it was resolved that the sentence given against him in the Admiralty-Court in *causa spoli* was void, because it was too general, uncertain and insufficient; it wanted *specification* and certainty of what things. *Altho'* this action was prosecuted *civiliter*, and therefore much more would it be *adjudged void*, if it had been instituted *criminaliter*; *Ibid*. The sentences of deprivation and of divorce are alike, especially in this point; both are *separations* from marriage, and both must *express* the cause, otherwise these sentences are void acts. He that is presented and instituted to a Church, is married to it; Hatton's Rep. 111. *Spirituale est conjugium inter Prælatum & Ecclesiam*; Extra. l. 2. tit. 6. c. 5. *Ad desponsatarum sibi Ecclesiarum solatium presentiam suam debitam exhibeant, quibus se fide mediâ copularunt*; Oshob. Conso. tit. 21. p. 119. The cause of the divorce must be specified in the sentence, 11 H. 7. 27. 2 Leon. 199. Hob. 296. 8 Rep. 68; and so must the cause of deprivation; *Ecclesia non privat beneficium citra ullam criminis declarationem sententiâ latam*; Azor. Insti. tom. 2. Col. 673. B. *Motiva Judicis in causâ criminali sunt pars sententiæ, eamque declarant*; Amati Resol. 85. n. 10. *Si in modum Inquisitionis actum est, non sufficit narrare factum, nisi quis narraret causam facti, & etiam modum facti*; In sententiâ privationis continetur crimen pro quo quis amovetur est; Innoc. f. 11. Item Extra. l. tit. 3. c. 26. A sentence of deprivation must be built on a material cause, otherwise it will have no foundation; and is supported upon meer
imagi-

imagination; for presumption in this case will not be able to bear up the grievous weight of such a destructive sentence; It wants the substantial part, especially the extrinseck solemnity; Solemnitas extrinseca non præsумitur, nisi probetur; nec obstat quod dicitur, præsумi omnia solemniter acta; Lynw. p. 321. u. and this is generally true, not only in the sentence, but also in the proceedings of Delegates, as they are Inquisitors; for their whole action is odious, as made contrary to the Rules of the Common-Law of the Church, which declares that no man ought to be deprived or condemned but upon the appearance of his accusers face to face brought before him; Inquisitio est de generibus prohibitorum; est enim contra Regulas Juris, quæ se habent, quod nemo sine accusatore damnetur; Et similiter est contra jus divinum procedens ex ore Christi, Joh. 8. 10. dum dixit, Mulier, ubi sunt qui accusant? et deficiente accusatore, dixit, nec ego te condemno; Marant. Spec. p. 193. n. 6. Therefore this sentence of deprivation, being in it's own nature odious, as the destruction of the man, and in a hateful procedure, can expect no favour; Solemnitas nec extrinseca nec intrinseca præsумitur in causâ odiosa; Otho. Corsto. p. 28. And the Law does presume and strongly imply malice in the Deprivers, who would not intert in their sentence of deprivation the cause why they so grievously punished the Incumbent, divorcing him from his Spouse, his Church: They might easily, if they could justly, express the crimes; viz. Adultery or Idolatry, Heresy or Schysm, for Non residence alone, without contumacy after Canonical admonitions to reside where the Law required, is not a true and just cause of deprivation; as the Law hath expressly declared in the case of carnal and spiritual Wedlock and Incumbency afore-intimated in Extra. l. 2. tit. 6. c. 5. Cum agitur de matrimonio carnali vel spirituali; Si Reus est absens, sed non est contumaciter; tunc in carnali non proceditur, sed expectatur absens: In spirituali verò si agatur de contracto, stabitur juribus antiquis super expectatione talium personarum; Ibid. Sect. Porro. Clericus siue sit absens de licentiâ Episcopi ad certum tempus, siue prater licentiam, Episcopus semper ipsum primò monere debet, ut redeat; alias non teneret sententia lata contra absentem non vocatum,

tum, non citatum; *Ibid.* glos. l. The ancient and still forcible Canon of the Churches of England and Ireland does declare all those *ipso facto* Excommunicate, who presume maliciously to deprive Ecclesiastical persons of their rights; *Auctoritate Dei Patris omnipotentis & presentis Concilii Excommunicamus omnes illos qui Ecclesias malefice suo jure privare presumunt*; *Lynw.* p. 345. *Ecclesias, id est, personas Ecclesiasticas; presumitur malitia, quando non apparet justa causa: sive in spiritualibus sive in temporalibus jure sibi pertinenti nemo privari debet sine culpa sua*; *Ibid.* glos. e, f, g. *Præsumptio talis sonat in audaciam faciendi contra prohibitionem legum vel Canonum*; *Ibid.* glos. h. The law looks on such audacious persons as scorers of that Law (which is prescribed to them as a rule in their judicial acts,) whilst they contemptuously proceed contrary to it; *Ibid.* The Canonists affirm that the Pope himself cannot deprive a Clergyman without a just cause, and certainly his Delegates cannot have more power; *Pontificis libera & plenissima potestas non valet quem privare beneficio suo sine justa causa, quia illa potestas in beneficiis semper intelligitur in ædificationem & secundum rectam rationem, juxta D. Pauli auctoritatem, 1 Cor. 10.* *Barbos. Collect.* p. 656. n. 4. A Parson of W. in the Diocese of Canterb. presented to P. A'ex. the 3d a *Querel of Nullity* against his Arch-Bp. for depriving him of Ecclesiastical Benefices without Law or Justice; the Pope by his *Decretal* commanded the Arch-Bishop to restore to the Clergyman his Church with the *mesu profits*; because the deprivation was given without any manifest or rational cause; Yet upon his restitution, the Arch-Bishop might prosecute the Parson if he pleased, before the Bishop of Exon as the Pope's Delegate in that cause, but the procedure must be orderly, and not by meer and noble office; *Non decet honestatem tuam Clericos tue Jurisdictionis, sine manifesta causa & rationabili, suis beneficiis spoliare, quibus teneris paternâ provisione consulere*—*Extra. l. 2. tit. 13. c. 7.* The natural rights of men are immutable; and unless they become slaves, none can deprive them of their freeholds without just cause; *Sine culpa non est aliquis puniendus*, is a Rule of natural Justice; *Jur. Reg. 23.* Punishment is the measure of a fault; and if

there be no certain fault, there can be no just punishment: *Satis perversum & contra Ecclesiasticam probatur esse censuram, ut frustra pro quorundam voluntatibus quis privetur, quem sua culpa vel facinus ab officii, quo fungitur, gradu non dejecit; 56 Dist. c. 7. Non privandus est quis jure suo, nisi pro gravissimo delicto; Ibid. glos. 9. Presbyter, si Ecclesiam justè adeptus fuerit, hanc non nisi gravi culpâ suâ & coram Episcopo canonicâ severitate amittat; Ex Conc. Cabil. 16. q. 7. c. 36.* These laws and reasons might convince the adversaries, that the said sentence of deprivation was unlawful and sinful, if they would suffer it to be brought into the Court of Delegates for an examination of it.

The Nullities and Iniquity of this sentence may further be demonstrated by it's own shewing: for the said Commissioners, in inflicting on the Petitioner that excessive punishment of deprivation, did not condemn him as a criminous or immoral man, but quatenus Archdeacon and Curate; *Propter ea quæ per eum commissa, permessa sive neglecta fuerunt quatenus Archidiaconum Dunensem & curam animarum in singulis Rectoriis ad præfat. Archid. annexis habentem à dicto Archidiaconatu unâ cum omnibus & singulis Rectoriis—annexis—deprivandum—fore de jure pronunciamus*—This sentence did indeed omit any particular cause or matter for which they deprived him, but it expressed that they condemned him for some things committed, permitted or neglected by him as Archdeacon and having the Cure of Souls in every Rectory annexed to his Archdeaconry; *Inclusio unius est exclusio alterius*; they implicitly discharged him from any crime or fault in any other respect or quality than quâ parte tenus, except & so far & only as Archdeacon & Curate, as aforesaid. Penal sentences, especially in criminal causes and those which are instituted by the Office of the Eccles. Judge, must be construed strictly & strongly against that Judge; because he did not, as he might, explain his meaning in a case of such hazard: *Sententia est stricti juris, & strictè interpretanda; Barbof. Rep. p. 341. Contra eum, qui legem dicere potuit apertius, est interpretanda facienda, Sext. Jur. Reg. 57.* They knew right well That no sentence of deprivation could be pronounced against

against a Minister, unless the merits of his offence did by law exact that sentence: These are the plain words of the English Canon 122th, and also of the Irish Canon 71th: and this is the judgment of all Ecclesiastical Judges: *Barbosa* cites the authorities 28 such Judges in this point; *Barbos. super 3. Decretal. p. 372.* This is the ancient Ordinance of the Church; *Pæna privationis à beneficio non potest imponi à Judice nisi exprimatur à Jure*; *Diaz. Pract. Crim. Canonica. c. 123.* And this is the present practice of the Ecclesiastical Courts; *Privari nemo debet nisi in casibus in jure expressis*; *Piasec. Praxis Episc. p. 337. n. 15. Rebuff. supra n. 62. Rebuffus de praxi Beneficiorum un tres bon authority à cest purpose*: *Davis Rep. 80, 81.* This sentence doth expressly declare That the Petitioner ought by Law to be deprived from his Archdeaconry, *propter ea*, for uncertain things; that is, *he ought to be deprived by law contrary to law*; for the law had declared that no sentence of deprivation should be pronounced against an Ecclesiastical Beneficer without expressing in the sentence the cause of the deprivation; therefore this sentence is a contradiction to it self, and for that cause is a meer Nullity; *Littl. Rep. 106.* The Commissioners in this sentence did not declare that the Petitioner had *ipso jure* or *ipso facto* incurred any sentence of the Law; yet in that case, the crime or material cause must have been expressed. These Commissioners pronounced that the Petitioner ought to be deprived *de jure*: but *quo jure*? by what Law? certainly such a sentence was and is against the laws of God, and contrary to all just laws of men, as hath been fully proved: It is against law to inflict any punishment on any fault, which by law ought not to be inflicted; *Cousin's Apol. part 1. p. 62.* The Law hath establish'd what is an Offence, and what is it's Punishment; and there is nothing of arbitrary power allow'd in respect to either; *Shore's Cases, p. 137.* Our law knows nothing of extraordinary means to redress even a mischief; *Id. p. 122.* Judges must Judge according to the law, and not by their own discretions; for Judges have not power to judge according to that which they think fit, but that which out of the laws they know to be right and consonant to law; *Judex bonus nihil ex arbitrio*.

arbitrio suo faciat, nec ex proposito domestica voluntatis, sed iuxta leges ac jura pronunciet; 7 Rep. 27. The discretion of a Judge in giving judgment is to discern by the Law what is just; *Judicis discretio est discernere per legem quid sit justum*, 2 Inst. 56. This discretion is to be legal, and is but a servant attending on the law, and is bound to follow the Rules prescribed by it; and it would be a confounded discretion in an Eccles. Judge to administer Justice according to his private conscience, his will or affections; *talis discretio confundit discretionem*; Call's Reading, p. 112, 113. Judgments of discretion are against the fundamental law of the land; they are *contra legem Terræ*; 2 Inst. 46. No freeman can, that is, ought to be disseized or destroyed *aliquo modo*, in any manner or way, by *propter ea*, by discretion, or for an uncertain good cause, no not for reason of state contrary to the law of the Land: Our Religion tells us that it is a damnable doctrine to do evil that good may come; Rom. 3. 8. *Politia legibus, non leges politiis adaptanda*; Hob. Rep. 154. *Non facies malum ut inde fiat bonum*; 5 Rep. 30. *Malum non approbatur propter bonum coherens*; 1. q. 1. c. 27. No man ought to be wiser than the law; 7 Rep. 3. Be not righteous over much, neither make thy self over wise; why should'st thou destroy thy self; Eccles. 7. 16. *With what judgment ye judge, ye shall be judged*; Oppress not the afflicted in the gate; for the Lord will plead their cause, and spoil the soul of those that spoiled them; Prov. 22. 22, 23. It is an express Text in the Canon-Law, That a sentence of deprivation given against a Clergyman, even by the Judges omitting the order of law, is a robbery; *Spoliatur etiam à Judice juris ordine prætermisso*; Extra. 1. 2. tit. 13. c. 7. *Nullus debet destitui vel spoliari etiam à suo Prælato, juris ordine non servato*; Ibid. The very omission of judiciary order in a sentence of deprivation renders the Ecclesiastical Judge to be a spoiler of the Clergyman: It is as robbing on the Bench of Justice; for it is his right to be judged by Law: And the Almighty will plead the cause of the oppressed, and he will not be mock'd by the meer and noble office of a High Ecclesiastical Commissioner; Give sentence with me, O God; and defend my cause against the ungodly people: O deliver me from

from the deceitful and wicked man; Psal. 43. 1. If thou seeſt the oppreſſion of the poor, and the violent perverting of Judgment and Juſtice in a Province; marvel not at the matter: for he that is higher than the higheſt regardeth, and there be higher than they; Eccleſ. 5. 8. If a ſentence of deprivation for lack of judiciary order be ſpoliation and robbery, and the ſucceſſion into the ſpoiled—Benefice be an Intruſion, as hath been proved by the Texts afore cited in pag. 152; much more may ſuch ſentence be a Nullity, which contained notorious injuſtice and intolerable oppreſſion, and alſo the repugnancy to all laws, but, the old *Iriſh Brehon-law*; which was no law, but a barbarous cuſtom of ſome Judges to deprive men of their rights by diſcretion or for uncertain cauſes; 4 Inſt. 258. It is the greateſt injuſtice and the worſe oppreſſion, when the Innocent under the colour of Juſtice, whereby he ought to be protected, is oppreſſed; 2 Inſt. 48, 56, 387. It is a horrible decree to reprobate a Dignitary totally and finally from his Office and Benefice, without cauſe, without pretence of law, without colour of Juſtice, and without any bowels of mercy; — *proſus amovendum fore—per noſtrum finale decretum*: Judges were his accuſers and his Executioners; they framed, ſubſcribed and exhibited to themſelves accuſatory Articles of alternative, ambiguous, and uncertain matters againſt him; and cloſed every Article with *objicimus et probare intendimus*, and concluded their Libel with *Volumus te puniri* upon pretended fame; without any averment that the ſaid matters were true, and without ſubſcription of any Advocate, Proctor or Promotor: They did not charge him with any immorality, enormity, or with any of the offences complained of and ſpecified in their Commiſſion; and beſides of theſe offences truly they had no Jurisdiction. The Petitioner utterly denied the ſaid fame and any juſt cauſe for it; and the known Rule of the Canon-Law is, *De Veritate criminum non inquiritur, niſi prius conſtet de infamiâ*; Extra. l. 5. tit. 1. c. 19; yet the Eccleſiaſtical Commiſſioners, by their own pretended meer and noble office proſecuted the ſaid Petitioner, as Archdeacon of Down, in 24 Courts within 28 days of one month, upon matters of facts, which were their manifeſt errors of law; viz. That the ſaid

Archdeacon was Curate of four Rectories which were annexed to his Dignity, that the sole Cure of those Rectories was incumbent on him as Archdeacon, and that he was bound to reside on them: and in their said sentence upon those subdolous words propter ea—the Commissioners pretended to deprive him for that non-residence, for the Canon Law must construe those words in such a cause; Odia restringi, & favores debent ampliari; Remotus est ab administratione, non expresso ob dolum an propter negligentiam, intelligitur propter negligentiam; Sexti. Jur. Reg. 49. and they so expounded this sentence by their Counsels at the bars of the Temporal Courts in Dublin, upon the Petitioners suggestions there to be filed for a Prohibition against those Commissioners.

This point of Non-residence (as it is the implied cause of the said sentence of deprivation) ought to be further considered for the manifestation of truth and for the utter confusion of that sentence. Parishes, Institutions and Parochial Residence are not appointments in holy Writ; 1. Rolls Rep. 453. Personal non-residence is not malum in se; Bishops in many cases do dispence with the Residence even of Vicars, where by Law & their own Oaths they were bound to reside; Othob. p. 95. The 37th Canon of the Church of Ireland declares that by the Laws of this Realm Beneficed-men may be licensed not to reside upon their Benefices: These laws must be meant of the Statute & Common-Law; There was no other Statute of Plurality & Non-residence then of force in this Kingdom but the English Act 21 H. 8. c. 13; which was brought into this Realm and accepted as a good and perfect law here, by the Irish Act 28 H. 8. c. 29. fol. 118, 121. This Statute expressly declares That no Archdeaconry, Dignity or Prebend in any Cathedral Church, or any Ecclesiastical Benefice perpetually appropriated shall be taken or comprehended under the name of a Benefice having Cure of Souls in the Articles of this Statute concerning Plurality and Non-residence: And the Judges in their Resolutions and Expositions of this Statute affirm That in this point it is declaratory of the Common-Law; and this clause put in Ex abundanti causelâ, or as a confirmation of that Law, Davis Rep 69, 80, 81. Vaugh. 197. Hob. 157, 158. Co. 4. Rep. 76.

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Gro: Eliz. 79, 663, Gro. Car. 691. 2. Jones 4. 1. Rells Rep. 454. Moor 261. 4. Rep. 119. 27 H. 8. 10. 29 E. 33. 44. Cawley's Penal Laws, p. 233. Watson's Clergy man's-law, p. 5, 121, 284. The Common-Law in the Realms and Churches of England and Ireland is the same, especially in this Article of Non-residence. Indeed an Archdeacon may have no Stall in the Quire of the Cathedral Church nor a Vote in the Chapter; he may have no Corps, no Dignity, nor be the Bishop's eie, or his Vicar-General in Spirituals in and throughout his Diocese; he may be appointed and limited within a particular District, and be obliged to Parochial Institution and Personal Residence, and to actual Care of Souls; and such an Archdeacon may be compelled to Parochial Residence, and upon his incorrigibleness therein, after canonical admonitions so to reside, he may be deprived; and in this case and distinction an Archdeacon was considered in Co. 3. Inst. 155. and Watson p. 172. 1. Gro. 663. 3. Rep. 355. *Archidiaconus in Archinatu resideat, concionetur, pascat, visitet; quæ si non præstiterit, nisi justam Episcopo reddiderit causam, ab eo censuris & poenis Ecclesiasticis ad hujusmodi tradatur officia*; Reform. p. 96. But a Diocesan and a Cathedral Archdeacon has his proper Residence at his Cathedral and *habet locum in Choro, & Jurisdictionem de jure Ordinario*; Lynw. p. 144. Othob. p. 53. Othob. p. 93. Co. Litt. 94. 4 Inst. 339, 3. Cro. 258, 691. And when this Archdeacon is absent from the Cathedral in visiting the Diocese, the Law reputes and allows him as present and resident at his Cathedral; *Archidiaconus potest abesse ab Ecclesiâ Cathedrali ratione Visitationis; quia visitando servit Ecclesiâ, & pro tempore talis absentia lucratur fructus sui Archidiaconatus*; Barbof. De Offic. Episc. p. 101. Garcias De Benef. p. 210. n. 332, 333; and during that non-residence, he shall enjoy the benefit of the daily offerings and distributions due to the present Canons as if he had officiated with them, because he served the Church in another station; *ut supra; Archidiaconus, visitans, Ecclesiam, Jura & redditus sua Præbendæ, non amittit distributiones quotidianas, cum visitando prædicta jura & loca serviat Ecclesiâ in re utili*; Barbof. De Can. p. 31. n. 15: & 142. n. 4. *Archidiaconus de jure est Prima Dignitas in Cathedralibus*

dralibus Ecclesiis, Id. p. 30. n. 4. 20. Dicitur Oculus Episcopi quasi ab eo in speculâ positus, lustrans aëtas totius Ecclesie, ut referat ad Episcopum; Ibid. n. 5, 12. This Archdeacon has an habitual Cure of Souls within the whole Diocese under the Bishop; Archidiacono omnium Clericorum cura post Episcopum demandatur, & post eum dicitur ejus Vicarius in omnibus; Ibid. n. 11, 34. But as it might seem unreasonable in the said Commissioners to deprive the Bishop of the said Dioceses for not residing or officiating personally in every Parish Church within his Bishoprick or in those Rectories which are Mensals or appropriate to his See (altho' the Law calls him Curatus Curatorum, and says that all the Souls of his Dioceses are committed to his Cure; Episcopus est Curatus totius Diocesis, 10. q. 1. c. 4. Episcopo totius plebis anima sunt commissa, Apost. Can. 38. and if the Incumbent fails, the Bishop at his own costs is to provide for the Cure; Hob. 144. Vaugh. 22, 132, Co. 5. Rep. 14. 1. Mod. Rep. 11, 12.) So it must appear more unreasonable in them to deprive the said Archdeacon in his Case. If he had been instituted to the actual Cure of a distinct principal Church, Rectory or Vicarage in the said Bishoprick, and quatenus Curate and Incumbent had neglected to reside and officiate in the said Church, altho' his Institution, the Canon and his own Oath had required him to reside there, yet no Bishop or other Ecclesiastical Judge could lawfully deprive him of that Church & Benefice for non-residence without previous admonitions; as hath been noted before in pag. 172. The Church by her Statutes and Common-Law hath restrained Ecclesiastical Judges from depriving Clergy men of their Benefices, as non-residents, without canonical premonitions; Ad hunc finem Statutum est de trinâ citatione successive & publice factâ ad residendum, ne scire volens Episcopus possit edictum paucis intimare; imponenda est frangi temperies Judicibus, qui scire volunt. Bald. Durand. Spec. l. 4. p. 204. This Statute and Canon of the Church in this Case are set forth in Apost. Can. 24. & in Extra. l. 2. tit. 6. c. 7. afore-cited; and the whole Title in the Canon-Law De Clericis non Residentibus shews this truth; Privatur beneficio Clericus non-residens, si monitus non redeat nec justam excusationem

excusationem

cusationem alleget; Extra. l. 3. tit. 4. c. 10, 17. Totus iste titulus De Clericis non residentibus ad hoc intendit, quod Clericus debet in Ecclesia residere; & si non fecerit, est monendus ut revertatur ad Ecclesiam; & si noluerit, poterit à beneficio removeri, si non redierit ter admonitus; prout Abbatis Lect. in loc. f. 139. This is also a Rule in the Common-Law of the Church; Clericus absens ad hoc ut privari possit, primò moneri debet; Barth. Socin. Jur. Reg. 81. and this is a Constitution of the Church of England, Qui residere noluerint ac etiam Ecclesie ministrare, Ecclesie ipsi, præmissâ admonitione debitâ per Diocesana Episcopum spoliemur; Lynw. p. 132. and it is expounded thus; Qui tenetur residere in persona propria, habet locum monitio: ad effectum ut aliquis sit privatus beneficio suo ipso jure propter non residentiam, requiritur monitio congruo loco & tempore; item termini assignatio, & expectatio aliqualis post lapsum termini; Ibid. glos. c. This is the modern Resolution of Ecclesiastical Judges, and the practice of the Royal-Court in deprivations in such cases; Privari debet non-residens, & se absens à beneficio requirente residentiam ultra tempus licitum; privationem tamen debet precedere monitio, et deinde pena censurarum, deinde subtractio fructuum, ita quod post quemlibet terminum pena expectatur absens ad minus per sex menses; nec teneret sententia qua privaretur non residens non præmissa trina citatione et non servata forma censurarum prædict. Piafec. Prax. p. 338. Garcias De Benef. part. 3. p. 183. n. 154. Zerola Prax. part. 1. p. 372. Morant. Spec. p. 229. n. 91. Barbof. De Parocho. p. 82. n. 75. Veneri Exam. Episc. p. 183. n. 10, 11. and the reason of the Laws in this Case, in prohibiting Ecclesiastical Judges from depriving any Clergy-man of his Benefice without due premonitions, is not only to bridle a spiritual Domination mounted on a meer and noble office and driving on in a furious career; as before hath been intimated, and was observed by the Fathers in the Primitive Councils; Juxta piscorum Patrum Synodalem sententiam nullus Episcoporum sine Concilii examine quemlibet Presbyterum deicere audeat; nam multi sunt qui indiscussos potestate tyrannica non auctoritate canonica damnant; prout ex Conc. 2. Hispal. in l. 5. q. 7. c. 1. But the chief reason is, that since non-residence in some cases is lawful,

and in some it is *malum prohibitum*; and the sentence of deprivation in all cases is a horrid punishment and destruction, which to some persons in many respects would be more cruel than the taking away their life; Therefore common reason & Justice required that the Beneficer should be warned of his danger, and cited to shew cause, if he can, why he ought not to be disseized of his freehold, and bereaved of his livelihood for his non-residence: The Canon Law allows a Parochial Incumbent to be non-resident in many cases; the Canonists reckon 12 Cases; *Lynn. p. 131. glos. 2.* The Council of Trent, and the greatest enemies to non-residence do excuse it in the Incumbent in case of Christian Charity, urgent necessity, due obedience, and evident utility for the Church or Common-wealth; *Conc. Trid. Sess. 23. c. 1. & Barbos. De Parocho. p. 79. n. 46.* The Common Law of this Realm allows the King's Chaplains to be non-residents from their Benefices, when they are attendants in the King's service, and if their Bishop, by citations and spiritual censures, should compell them to personal Residence upon their Benefices, they may have a prohibition against the Bishop; *Fit. H. N.B. n. 44. G.* The Irish Statute 36 H. 6. c. 1. which requires Beneficed persons to keep Residence in their proper persons within this Land, excepts Students, Pilgrims, and such as will of necessity, must sue by way of appeal, or any other lawful way for reformation of their Benefices. The Irish Act 15 Car. 1. c. 11, shews that tho' all Beneficiaries with Cure, especially Vicars, are bound to perpetual Residence, yet for lack of glebs these Incumbents are necessitated to perpetual non-residence; upon which Act it may be observed, that it implicitly declares that there are Beneficiaries without Cure, and that these are not bound to residence, as Incumbents are. The Act of Plurality and non-residence before-mention'd does expressly declare, That no Chancellor or Commissary of any Bishop should be bound to reside at any Ecclesiastical Benefice with Cure of Souls, if he had any, within his Diocese, which is a Rule in the Canon Law, and the reason of it is, because this Incumbent is present in the service of that Church, even in a larger and more advantageous Sphere. *Qui juravit in Ecclesia reside-
re,*

fidere, pro servitiis Ecclesie licite se absentat; Extra. l. 3. tit. 4. c. 13. *Absentes dici non debent, qui pro Episcopi & Ecclesie servitio commorantur*; Ib. c. 15. Now to apply these Laws to the said sentence of deprivation, in the *De jure deprivandum*. The said Lisburn Commissioners knew that the Petitioner was the Chancellor and Principal Commissary of the Bishop of Down, and they perused his Patents of Vicar-generalship of the Dioceses of Down and Connor; and they prosecuted him *quatenus* Chancellor and Commissary of the said Bishop in 36 Courts, as before was hinted in pag. 34; and therefore if the actual Cure of Souls in any Church within the said Dioceses had been incumbent on him, the said Act of non-residence had prohibited the said Commissioners from depriving him upon that account: Besides they did not pretend in their Articles, or in the said sentence, that they themselves or any other Visitor or Ecclesiastical Judge or person whatsoever had ever admonished him to reside on any Rectory or Parish annex'd to his Archdeaconsry or Prebend; or to attend the Cure in any of those Parishes or Rectories, or in any other Parish; and indeed it was apparent in the Petitioner's Title to his said Archdeaconsry (which he exhibited to them) that he was not instituted to any Parochial Church, or to the Cure of Souls in any Rectory or Parish; but he was collated, instituted, invested and installed to the Dignity and Jurisdiction of the said Archdeaconsry, and to all the rights, privileges, members, profits & other appertinances belonging to the same; and he was legally put into the quiet & corporal possession thereof in the Stall of the Quire, and giving a Voice in the Chapter of the Cathedral Church of Down. It was likewise apparent that the said Commissioners excessively punished the Petitioner for their own errors; which they subscribed in their said Articles and Sentence against him, and which Justice, Law and Conscience would oblige them to retract; and a Court of Delegates ought to correct and reverse; for otherwise a definitive sentence passeth as a Law, and is taken as a truth: And it had so imposed upon a Great Man, great in authority but greater in prejudice, as to affirm that the Petitioner's non-residence was an enormous offence, and *crimen laesae majestatis*.

majestatis divine, upon *Pasce oves*; and that therefore the Petitioner deserved no grant of an appeal, or of a prohibition or of filing his complaint or suggestion; so easy is it in some men, when they have a mind, to wrest a Text, and to bend a Law as a leaden Rule to their own ends; whereas a more Learned Lawyer proves the lawfulness of plurality and non-residence out of Scripture; *Davis Rep. 80.* The said Commissioners declared implicitly in their said sentence and expressly in their Articles aforesaid, That the sole Care and cure of Souls in the several Rectories or Parishes annexed to the Petitioner's said Archdeaconry was by Law incumbent on him; This declaration was certainly repugnant to reason and equity, and also contrary to all just Laws; It was impossible in the Petitioner to reside at the same time on every of the several distinct Rectories annexed to his Dignity, and to reside likewise at his Stall in the Cathedral Church, where he was bound to reside; *Ad impossibile juris vel facti nemo tenetur*; *Lynw. p. 71. glos. b.* In their said Articles the Commissioners declared, That the said Rectories were members and parts of the said Archdeaconry, and that the Petitioner had not resided on the said Rectories, but that he had resided for the space of 19 years then last past at Lisburn; where the said Cathedral was and is, and where his Stall and his proper residence and the Head and Union of the said members lay; and it was unreasonable that he should elsewhere reside, since the Law and the Local Statutes of Cathedrals obliged him under several penalties to reside there; and it was a good presumption, that he had resided where he ought, by a prescription of 19 years of the said Commissioners own shewing; *Residentium facere quis presumitur, ubi habitare consuevit*; *Barboz. De Con. p. 218. n. 6.* and it ought not to be suspected in those Metropolitan and his Triennial Visitors of the Dioceses, Archdeaconry and Rectories aforesaid, that they were so ignorant in the Laws against non-residence, or so regardless of their Consciences as to suffer the Petitioner to lie 19 years under the sin of non-residence without punishment, if it had been unlawful. The said Commissioners perused the Royal Charter under the Great Seal, by which the Cathedral Ch. of the united Bishopricks of Down & Connor was

erected

erected at Lisburn aforesaid, and the Chapter-men had the same rights & privileges there, which they had anciently in the now ruinous Cathedrals situated at Down Patrick and at Connor; and they likewise perused the former Royal Erection and endowment of the Cathedral Chapters of the said Dioceses, mentioned before in pag. 132; by which it was evident that the several Rectories now annexed to the said Archdeaconry of Down, had been appropriated to dissolved Monkeries, and becoming the King's lay-fee were by him granted and perpetually united to the Dignity of the Archdeacon in the Chapter of Down for his Cathedral Service as afore set forth; and the said Archdeacon for the time being, amongst the other Dignitaries of the said Chapter, had all the rights and privileges which the Archdeacon and Dignitaries of the Chapter & Cathedral Church of St. Patrick's, Dublin, enjoyed or belonged to them. There is also a Regal Grant (which was confirmed by an Irish Act of Parliament in 36 H. 8.) excusing the Dean, Archdeacon and the several Dignitaries and Prebendaries of St. Patrick's aforesaid from any Parochial Residence on any Church which they might hold, not only in the Diocese of Dublin, but also in any other Diocese within this Kingdom, whilst they reside at their said Cathedral; and a former Statute, viz: 28 H. 8. c. 14. declared, That the Archdeacon, Dignitaries and Prebendaries of the Church of St. Patrick's, Dublin, keep daily and continual Residence at their Cathedral; This ancient Privilege and Right of the Chapter-men of St. Patrick's, Dublin, concerning their Parochial non-residence is extant in their Records, *Residentes infra circuitum Eccles. Cathedralis licentiam habent non residendi in beneficiis, quæ habent in aliis Diocesibus*, prout Dignitas Decani, p. 213. This passage is the more remarkable, because the said Commissioners were concerned in the said Chapter of St. Patrick's, and knew those privileges, and also the Law, *Decet concessum à Principe beneficium esse mansurum*; Sext. Jur. Reg. 16. The said Commissioners and their Counsels, in justification of their said sentence, insisted very much and often upon *Qui verd.* in the 32th Canon of the 4th Council of Lateran, which is inserted in *Extra. l. 3. tit. 5. c. 30*, but that Canon was a

fiat contradictione to their opinion and sentence; for it expressly declares, That a Dignitary or Prebendary, having a Parochial Church annexed to his Dignity or Prebend, must reside at the Cathedral, and not at the Parochial; *Qui vero habet Præbendam vel Dignitatem, cui Ecclesia Parochialis est annexa, oportet eum in majori Ecclesia deservire*; which words are explained and confirmed in a subsequent General Council; *Habens Canonicatum vel Dignitatem, cui unita est Parochialis accessorie & perpetuo, debet residere in canonicatu vel Dignitate, & non in Parochiali*; Barbof. Collect. D. D. super Decretal. l. 3. in loc. p. 67. and all ancient and modern Expositors of this Canon (saving the said Commissioners and one Mr. Sloan) have so construed those words; In *Ecclesia annexa Præbenda quis non cogitur residere*; licet ipse Præbendarius in illâ Ecclesia habeat curam aliquam laxiorem; Innoc. in loc. f. 152. *Ecclesie Præbendales residentiam personalem ipsius Præbendarii non requirunt*; ut Qui vero. In Extra. Othob. p. 118. gloss. e. *Ubi Ecclesia Parochialis est annexa Præbenda vel Dignitati, persona principalis excusatur a residentia personali*; ratio est, quia tenetur residere in Beneficio suo majori, ut dicitur in Qui vero. Lynw. p. 132. gloss. g. In the Canon-Law the major Ecclesia is taken for the Cathedral, and the minor Church, in respect of this major, is taken for the Parish-Church; *Ecclesie Rurales vel que in urbe sunt Parochiales dicuntur minores respectu Ecclesiarum Cathedralis que sunt majores Ecclesie*; Id. Lynw. p. 9. gloss. l. The ancient ordinary gloss on the Decretals and the said Canon *Qui vero*—declares that the Cathedral Dignitary and Prebendary is excused from residing personally on their annex'd Parochial Churches; *Quilibet in propria persona debet in Ecclesia deservire, nisi in casibus in Qui vero. sc. cum Parochialis Ecclesia sit annexa dignitati vel Præbenda majoris Ecclesie*; Extra. l. 1. tit. 28. c. 2. gloss. h. *Jus commune est, ut in ea Ecclesia in qua intitulatus est debeat inservire, nisi in casu ubi Parochialis Ecclesia annexa est dignitati vel Præbenda*; Extra. l. 3. tit. 4. De Cler. non residentibus c. 3. gloss. 1. *Quilibet Rector Parochialis Ecclesie per se debet deservire in ipsa, nisi in his duobus casibus; sc. Cum annexa sit dignitati vel Præbenda*; Extra. l. 3. tit. 5. c. 30. *Qui vero in casu*. The late Canonists

Canonists and Casuists have resolved this point without difficulty and in great clearness; *Cum Ecclesia Parochialis unita est Prabenda vel Dignitati, tunc Dignitas potest servire per substitutum, & ipse resideat in Cathedrali Ecclesia; Veneri Exam. Episc. p. 182. n. 4. Barbof. De Parocho. p. 75. n. 22. Id. Collect. D.D. supra, p. 67. n. 6. Garcias De Benef. part. 12. p. 405. Azor. Inst. part. 2. Col. 827. A. Less. De Just. p. 366. n. 148.* and their Resolution was partly grounded upon these Rules of the Law, *v. z.* That none but the Bishop can institute and commit the Cure of Souls; and that no Clergy-man can reside and serve a Parochial Church and the Cure of Souls there, without the Bishop's licence or his special mandate; *Sanctis canonibus constitutum est quod cura animarum in Episcopi judicio & potestate permanent; 16. q. 7. c. 11.* No Archdeacon as such can institute any man to a Cure of Souls; *Archidiaconus sine mandato Episcopi non committit Curam animarum; Extra. l. 1. tit. 23. c. 4.* and so it is ordained in the 38th Canon of the Church of Ireland, *That none should be a Curate but he that is admitted by the Bishop of the Diocese in writing under his Hand and Seal:* and much more must a Parochial Incumbent have a special Commission, as an *authorative institution* from his Diocesan, 4. Rep. 79. with an *Accipe tibi curam tuam & meam*, before he takes on him that Cure of Souls. An Episcopal institution to a Cathedral Dignity or Prebend is a Collation or an Investiture, and is very different from an institution to an actual Cure of Souls; for so the Canon-Law distinguisheth; *Triplex est institutio; Quaedam est institutio tituli collativa; Alia est institutio auctorizabilis quoad commissionem curæ animarum; Alia est institutio realis & actualis, quæ vocatur investitura vel inductio in possessionem realem & corporalem; Sext. Jur. Reg. 1. in Casu.* Altho' the Parochial Churches (which are annex'd to an Archdeaconry or Prebend) are as Benefices of *Sine Cures* to the Archdeacon and Prebendary, yet they are not *Sine Cures* to the Parishioners nor to the Bishop: These may bring their action at the Common-Law to have a Curate for performing Divine Service to them; 22 H. 6. 52. and the Bishop is *Curatus Curatorum*, and is bound to provide for the Cure, as

was

was before proved in p. 180. The Cathedral Dignitary & Prebendary (by the said 38th Irish Canon & by the ancient laws of the Church and Realm) has the right of nomination or presentation of a Vicar or Curate to those Parochial Churches; *Ecclesia Parochiales unitæ conferuntur ad nominationem Rectoris principalis, & nominatus approbatur ab Episcopo*; Barbol. De Can. p. 68. and as in the Petitioner's case, it is not in the power of the Dignitary or Prebendary to erect a perpetual Vicarage out of the annex'd Rectory; such Annexations were the acts of the Supreme Ordinary, and those Rectories were the Grants of a Royal Donor, and his will ought to be kept religiously and inviolably, 11. Rep. 73. King James the First, the Donor of the said annex'd Rectories and the Founder of the said Cathedral-Chapters of Down and Connor, commanded that these Concessions should last for ever; and if any Vicarage be erected out of the said Rectories, the Erection must be made by the direction of the Lord Lieutenant and Council of Ireland, or according to the Irish Statute 33 H. 8. c. 14, by which the endowment of the Vicarage is restrained to 10 l. sterl. per annum. But the Irish Canon 37th and the laws of the Church have sufficiently provided, That the Cure of the said annex'd Parishes should not be neglected, and that their Curates should not want a competent maintenance; *Provideant Diocesani, ut semper apud Ecclesiam resideat aliquis, qui de animarum curâ sit sollicitus, ac se in celebratione divinorum & collatione sacramentorum exercent utiliter & honestè*; Othon. Conso. p. 36. and such Curates, being admitted by the Bishop, are not appointed as Assistants to the Dignitary or Prebendary, but they are as the Temporary Vicars of those Parochial Churches, and may not be removed out of their Curateships, until they be otherwise provided for; except by their notable evil carriage they deserved the contrary; Irish 30th Canon. Where the Local Statutes of the Cathedrals allow it, some of their Dignitaries and Prebendaries may take from their Bishop an authoritative institution to one of the Parochial Churches annex'd to his Dignity or Prebend; and in that case he may be obliged to Parochial residence, and to actual Cure of Souls, according to the Irish Canon 28th; but

but *this residence* is excused in the *Chapter-men* of the Cathedrals of *St. Patricks, Dublin*, and of *Down and Connor*, as hath before been shewn : and this was observed in the Diocese of *Dublin* by a learned Reporter, *Davis*. 80, 81; and this excuse was a right due to the Dignitaries and Prebendaries of Cathedrals by the Canon-Law, which in this case is the fountain of that learning; *Ubi Ecclesia adhæret Præbendæ, Le text del Canon ley est le propter fountain de cest learning*; *Id. Davis Rep.* 69. and this text is express in 21. 9. 1. there cited; and this was declared as law in the Council at *Lions*, inserted in in *Sext. l. 3. tit. 4. De Preb. & Dignit. c. 6. Habere personatum cum Curâ & Præbendam, cui annexa est Parochialis Ecclesia, dispensatio necessaria non existit*; and the reason was set forth in the *Case*, and in *glos. è. ibid. viz.*, because the Parochial Church perpetually annex'd to the Prebend was as it were suppress'd and extinct, and taken as a *simplex beneficium & compatibile* and as a *sine Cure* to the Prebendary; and he needeth no dispensation for a plurality, when he takes with it another Parochial Church, which has an *actual Cure* of Souls: for by the *annexation* and union of the Parochial Church to the Prebend, that Parochial became as a *farm* and property of the Prebend, and as the *Corps* of it, and the *title and institution* was drowned by the union and incorporation; for these are the expressions of the Canonists in this Case; *Titulus unius beneficii suppressus est; et judicatur ut prædium ejus cui fit unio, et ejus naturam induit; et habetur sine dispensatione; et in eo institutioni non est locus*; *Garcias De Benef. Part. 12. p. 404. n. 12, 14. Rebuff. p. 161, 206. Sext. ut supra. et ibid. c. 16. Navar. Consil. tom. 1. p. 93. Less. De Just. p. 366. n. 148.* and such are opinions of the Temporal Judges in the like cases, *Hob. 157, 158. Davis. 80, 81. 1. Rolls Rep. 357. Watson supra. p. 129.* and the Irish Statute 15 *Car. 2. c. 10. f. 674* declares *That in some parts of this Kingdom, Dignitaries and Prebendaries of Cathedral Churches have six or more Benefices united to one Dignity or Prebend; and provides That where there are an over-great number of such Benefices, they may be disappropriated and settled upon resident Incumbents, and instead thereof to unite a presentative Benefice, having actual*

Cure of Souls; to the Dignity without Cure : and the Irish Act of 18 Car. 2. c. 7. f. 906 providing for the Incumbents, who have the actual Cure of Souls, declares That the Rectory of the Church of St. Andrews did anciently belong to the Precentor of the Cathedral Church of St. Patrick's neer Dublin, as part of the Corps of his Precentorship. Wherefore if the contents of this Paragraph be true (as they are undeniably so) the adverse notions are certainly erroneous and untrue; and consequently the Makers and maintainers of the said sentence of deprivation, as founded upon those notions, are accountable in a Court of Justice to the Petitioner, to their own Consciences and to the World. He that justifieth the wicked, and he that condemneth the just, even they both are abomination to the Lord, Prov. 17. 15. And it is said in the Irish Statute 10 H. 7. c. 5, That some Prelates and other Beneficiaries within the Land of Ireland by false and untrue suggestions were deprived and put out of possession of their Benefices and livelihood wrongfully by strength and might, and such persons as provisors were put in their places, contrary to reason, right and good Conscience. But no man may be deprived of his freehold, but by the law of the Land; and the offence, for which he is to be displaced, must be sufficient; 3 Mod. Rep. 333. A Decree, whereby a man is deprived without law and a sufficient cause, is void, Vaugh. Rep. 337. A man loseth not his right by his Judge's mistake in law; Id. 145. especially if the mistake be expressed or implied in the sentence; as the depriving a Beneficer of his Ecclesiastical freehold by way of Inquisition for reformation of manners; in which Case the Law could impose upon him only penance or security for his good behaviour, 11 Rep. 98. Moor. 247, 411, 412. Cro. Eliz. 78, 689. 3 Bulstr. 189, 190; in this and in many other cases, the mistake is fatal & ipso jure null. The Lord Chief Justice North said, the Ecclesiastical sentence, upon sight of it, was contrary to Law, and we gave little credit to it; Raym. Rep. 502. and much more may all Ecclesiastical Judges and Delegates, upon view of the said sentence of deprivation, abominate it, beholding on it's face notorious iniquities, nullities and Attentates. Since therefore some persons have published the said sentence of deprivation as a just and noble act, truth & justice do

do require that it ought to be *further Examined*; and being an Attentate and a Nullity it ought to be exposed as an unlawful act; and ought to be abhorr'd as it was an iniquity and a sinful act, and is utterly inexcusable.

The said *Lisburn Commissioners* (*during the term which the Law gave for appealing from their declaratory sentence of deprivation*) made an executory sentence upon the Petitioner; Their declaration, sentence or Opinion was their manifest error, as being contrary to the sense of the Law; — *Propter ea—deprivandum fore de jure debere pronunciamus, decernimus & declaramus*: This indeed was their sentence and decree made as they pretended, according to the Rules and meaning of the Ecclesiastical Law; but certainly the Law had a *contrary intent and declaration* in this Case, as hath been before demonstrated: They prosecuted and condemned the Petitioner as in a *criminal cause*; and by way of *Inquisition*, in which case the Law expressly declares, That no Ecclesiastical Judge can give a definitive sentence of deprivation against a Beneficer, unless for cause of *heresy* or other enormous *notorious crime*, which *ipso jure* had disabled him even before that sentence was pronounced against him, as was proved before in page 30. But the said Commissioners in their said sentence decreed *That the Petitioner ought hereafter to be legally deprived of his Archdeaconry*; and the law allowed an appeal, as an *Ecclesiastical Writ of error* and as an *arrest of judgment and execution*, from that erroneous decree; and therefore their awarding actual execution against him in his freehold instantly upon the said decree, during the legal stop of execution, was an unlawful and null award and execution: Their *Per presentes sic deprivamus & amovimus* was an Attentate and an affront to the law; *Aliud est condemnare & aliud est pronunciare condemnandum*; nam talis sententia expectat aliam sententiam post se; *Marant. Spec. p. 331. n. 125.* The Law has made a wise and kind provision for the Subjects, when they are aggrieved by their Judges; viz. A Term in which they may appeal from their sentences, and any execution or prejudicial act done to the appellant, within that term, is an Attentate or a void and a punishable act, altho' as he might, the party

party did not make use of that beneficial term by interposing his appeal from those sentences. The law of it self doth interpose this appeal from definitives *intra decendium*, and thereby stops the hands of the Judges and the executioners of their sentences; The party indeed may renounce this benefit and privilege which the law gives to him; but no other subject can invade or take it from him; the Judge à quo is an Attendant and punishable, if he executes his sentence of deprivation during the said Term of appealing, as if he had executed it after the appeal: *Per appellationis Judicem penitus debent revocari ea omnia, quæ medio tempore inter sententiam & appellationem (quæ postmodum infra decendium interponitur ab eadem) contingit innovari, ac si post appellationem innovata fuissent, Sext. De App. c. 7. Gestæ pendente tempore decem dierum à die sententiæ (qui dantur ad appellandum) sunt Attentatæ, et viâ Attentatorum revocandæ, perinde ac si fuissent gestæ appellatione pendente; paria enim sunt esse appellatum et esse infra decem dies ad appellandum: et propterea Provisio facta, Judicis auctoritate, imò etiam à Papâ, intra hos dies non convalescit, quamvis postmodum non appelletur; Lancell. De Attent. p. 172. n. 14, 15. p. 175. n. 43. p. 209. n. 13.* Besides the authorities of law afore-cited in pag. 151—that the Pope and his Lord Chancellor cannot present or collate an Ecclesiastical Benefice, as vacant upon a sentence of deprivation, during an appeal depending from that sentence; and that if any such Presentation or Collation was made, or any institution, investiture, instalment and induction of any successor into that Benefice pending that appeal, they were all Attentates, Nullities and meer void acts; this point is as certainly true as Canon Law and Practice can make it; *Collatio Beneficii vacantis per privationem facta, antequam sententiâ privationis transfret in rem judicatam, est nulla: Hoc pro indubitato praticatur in Rota Rom. quod privatus durante appellatione non censetur privatus; Piafec. p. 338. n. 17. Id. Lancell: p. 172. n. 17, 20. p. 182. n. 79, 84, 85, 88, 98, 108, 109, 115.* So the Temporal Law of England and Ireland allows the Subjects to say *Rex non concessit*, Hob. 147. and that they may argue against the Illegality of the King's Grants & Presentations, and say that he was deceived in

in his grant or *misinformed* in the Law ; for the King's *Presentation*, reciting a Title which is false or no title, is a void *Presentation*, *Hob. 302. Vaugh. 14* ; and when the King's grant sets forth that an Archdeaconry is vacant, whereas it was not vacant, that grant is void ; *Dyer 47, 197* ; and this needs not now to be proved, that an Archdeaconry, being deprived by a definitive sentence of deprivation, was not vacant during a lawful appeal interposed from that sentence ; and it is not needful here to repeat what was shewn before in pag. 67, That the Petitioner's appeal from the sentence of deprivation aforesaid was *implicitly allowed as lawful* by the said *Lisburn-Commissioners*, seeing in their *acts of Court* they received the *exhibition* of his said appeal, and appointed thereupon a *Consultation* ; and they did not reject the appeal, nor order any *refutatory Apostles* against it ; but in a *subsequent Decree* made in their Court, (sequestring from the said Archdeacon all the Revenues of his Archdeaconry for their *proxy-mony, &c.*) they declared, that he was still Archdeacon & not late Archdeacon ; thereby allowing the *validity* of his appeal, yet contrary to all laws, at the same time committing *attentates* against him ; *Fu-dex non respondendo petenti Apostolos censetur deferre appellationi ; Rota in Bisign. De App. Decis 22*. The Petitioner, upon the exhibition of his said appeal, made to the said Commissioners his instant and repeated demands of Apostles ; and it is a common Rule of the law, That the *Judge à quo* is suspended upon the appeal exhibited to him until he delivereth apostles to the appellant, especially when the appeal was made from a definitive sentence and it was not expressly prohibited by the Prince or the Law ; for Apostles were part of the appeal and of it's substance ; and all the acts of the said Judge (*altho' he be a Papal Delegate*) made during the term for demanding and receiving apostles, were Nullities and Attentates ; that term having the same operation and force in law as a suspensive appeal ; *Gesta per Delegatum Papæ inquirentem contra quendam Prælatum, super malâ administratione post appellationem & ante dationem Apostolorum, sunt per viam Attentati revocanda ; Rota supra. Decis. 3. Lancell. De Attent. p. 297. n. 22. Apostoli dicun-*

tur pars & de substantia ipsius appellationis; Jurisdictio Judicis à quo est suspensa pendente tempore ad petendos apostolos; et processus eo ipso est nullus, si sit factus per Judicem à quo non datus apostolis, saltem refutatoriis; Innovari aliquid non potest pendente termino ad petendos apostolos; Id. Lancell. ibid. n. 16, 18, 19, 21, 25. The Law is severe indeed but very just in this Case against Attentants, as hath been partly intimated before in pag. 156, 158. and may be further observed in these Resolutions of Canonists; Attentans dicitur esse in mala fide, & in dolo; Id. p. 534. n. 45, 68. Attentata dolum arguunt; Ibid. n. 46. Attentans equiparatur violento spoliatori; Ibid. n. 71. Attentans tenetur ad fructus à die attentionis & intrusionis; Ibid. 67. Attentans & intrusus non habetur pro possessore; Id. p. 439. n. 14. Intrusio est revocanda viâ attentatorum Id. p. 25. n. 62. All Intruders are Attentants, and are odious in the eye of the Law; as Receivers are accounted as bad as the Thieves; Intrusi videntur in jure maxime odibiles; Id. p. 469. n. 41. Executio contra Intrusum absq; novo processu fieri potest, docto de Intrusione; n. 42. Intrusus non potest dare objectus; & in odium ipsius intrusi debet onus probandi possessionem suam; n. 44. De Intrusione potest dari etiam post 30 annos; n. 58. Passus Intrusionem non tenetur probare quòd Intrusus sciverit rem litigiosam, & quòd scienter in re vitiosa successerit; n. 56. Intrusus dicitur qui habet titulum ab eo qui dare eum non potest; & ubi tertius lite pendente intruderet se in possessione rei de qua litigatur; Id. p. 25. n. 62, 73. Attentare dicitur tertius qui fundaret se in processu & sententiâ per appellationem suspensis; Id. p. 23. n. 61. Attentata per appellationem videntur ceteris Attentatis odiosiora; Id. p. 474. n. 120. Rota tenet quòd si presentatus (pro quo sit lata sententia & ab ea appellatum est) pendente appellatione possessionem capiat, talis possessio dicitur Attentata; Id. p. 265. n. 11, 12, 13. Innovationes lre pendente videntur prohibita ratione naturali; Id. p. 381. n. 10. Ratio naturalis dicitur, ut dum de aliquâ re disceptatur, non debeat aliquod præjudicium per alterum inferri; Id. p. 327. n. 46. Attentata à tertio succedente in re attentata et vitio affecta revocantur remedio attentatorum; etiamsi succedat cum titulo et bona fide; Attentati vitium est reale, et transit cum re in successorem in ea; Id. p. 22. n. 30, 31.

It

It may be noted upon these authorities of the laws in the *Petitioner's Case*, That the Archdeaconry of *Down*, when vacant, is *Collative* by the Bishop of *Down*, and not *Presentative* by the Crown: that the Bishoprick of *Down* became void on 21 *March* 1693 by the deprivation of Dr. *H.* then Bishop thereof; that Dr. *Foley* on 31 *Aug.* 1694. succeeded in that Bishoprick, and by the late King's Letters Patents of Donation and Restitution of the Temporalities of the said Bishoprick the said Bishop *F.* was intituled to all Collations, &c. and other rights belonging to the said Bishoprick from the day of the deprivation of *H.* aforesaid: that the pretended sentence of deprivation of the said Archdeaconry of *Down*, against the Petitioner as afore set forth, was given of 28th day of *March* 1694; that the Petitioner was not deprived for *Simony*, in which case the King by the Stat. 31 *Eliz.* c. 16. might present to the said Archdeaconry; 2 *Ventr.* 269, 270. that if the said Archdeaconry had been legally and justly vacant by the said sentence of deprivation, *propter ea* given against the Petitioner, the said Bishop *F.* had the only right of collation to it, and not the King; 23 *E.* 3. c. 3. *Dyer* 87, 103, 348, 369. *Hob.* 31, 147, 154. *Co. Littl.* 90. 4 *Mod. Rep.* 203; and it was much more the Bishop's right by the King's special words afore-mentioned in the said Grants of Donation and Restitution; when the King had not presented to the said Archdeaconry, but had granted to the Bishop the Collation of the said Archdeaconry and all the Temporalities which had been in the King's hands, from the day when Bishop *H.* was deprived; 41 *E.* 3. 5. 44 *E.* 3. 24. 11 *H.* 4. 37, 59, 76. *Shore's Cases*, p. 167, 168. During the Petitioner's appeal and the term for prosecuting his appeal from the said sentence of deprivation given against him as Archdeacon, and during his suggestion depending in the high Court of Chancery in *Dublin* for a prohibition to stop the force of the said sentence, Dr. *L.* the Petitioner's friend on 30 *Nov.* 1694 petitioned the then Lords Justices of *Ireland* for the King's Letters Patents of Presentation of the said Archdeaconry, to be granted to him, upon an untrue and covinous suggestion that the said Archdeaconry was vacant upon
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the said sentence; whereas he knew that the validity of the said sentence was then depending before the then Lord Chancellor & several of the Judges in a cause between the Petitioner & the said Lisburn Commissioners; and the Cause was argued in the said Court of Chancery in ten several days, viz. from 20 June 1694. to the 4th. of Febr. 1694. *Appellanti non currunt tempus prosequende appellationis coram Iudice Ecclesiastico, quamdiu quis coram Seculari prosequitur; Rebuff. p. 1154.* The said Dr. L. was present when the said sentence of deprivation was given against the Petitioner, and when the Petitioner entred his protestation and made his actual appeal from the said sentence, and when his formal appeal was exhibited from the same before the said Commissioners; he also knew that the Petitioner's said appeal was lawful, and a natural defence, and that it was not prohibited by the said Lisburn Commission, which he heard read, and knew the contents of it; and he knew the known Rules of the Law, *Appellatione vel lite pendente nihil innovandum*; and that the iniquities of Attendants and Intruders will be visited upon themselves, and upon their heirs from generation to generation until they be purged by repentance, especially by that part of it which requires full restitution; *Attentans pro purgatione attentatorum debet reducere rem in pristinum, et eum, in quo passus est attentata, statum; Lanc. De Attent. p. 502. n. 77. Sententia sola non sufficit ad purgationem, nisi fuerit executioni demandata tam quoad expensas quam quoad fructus; et restitutio debet fieri usque ad obolum pro purgatione Attentatorum; Id. p. 500. n. 21. Purgare Attentata tenetur qui attentavit vel per se, vel per alium de suo speciali mandato, vel qui sine mandato Attentata ratificavit, vel qui habet cognitam ab Attentante, vel successit in re attentata, vel lite pendente se intravit, vel subrogatus est in iur. resignantis, qui attentaverat; Id. p. 503. n. 98—Post mortem Attentantis haeres et Successor tenentur ad Attentatorum purgationem; Id. p. 524. n. 232. Attentata revocantur etiam post mortem Attentantis; etiam contra heredes suos, et contra successorem in beneficio attentato, Id. p. 61. n. 264, 265. p. 98. n. 13. p. 413. n. 11. p. 515. n. 175.* These are maxims in the Common-Law of the Church, which are ground ed upon reason and Religion, and have been affirmed, as such, in the Court of Rota in the places

places above-cited: and the Superiors, the Judges of Appeals (*viz.* those who are appointed to admit them, and those who are to hear and determine them) are bound, by vertue of their office, by their oaths and by Justice, to receive the Querels against such Attentats and Intrusions to be speedily revoked; and must not admit such exceptions against the Querelant, *viz.* that he was an excommunicated person, or a Criminal man; or that his Appeal was deserted or rejected; or that he had no legal Title to the attented Benefice; or that the Attentant was dead; or that the revocation of the Attentats would scandalize his memory, or that his sentence of deprivation was righteous, and that the Querelant's appeal was frivolous; *Id. p. 508. n. 165.*— But those Judges and Officers *in Signatura, in officina Justitie & in Rota* must grant to the Querelant a Commission of Delegates to hear and revoke those Attentats; *they must*, if they regard their Oaths and their Consciences to do right to the Subject without respect of persons; if they value their own interest in their places for fear of forfeiting them for denying Justice; if they would free themselves from the importunities of the oppressed Complainant crying in the fore and afternoon for justice on earth or for judgment from heaven; if they have any compassion for the Souls of the Attentants and Intruders, *in periculum anime*, destroying themselves by the iniquity of their attentats, until they be revoked and purged; for *attentats* are mortal sins, and these Judges ought *ex officio mero* to take cognizance of them and punish them, and not to suffer Sin lying upon the Consciences of their neighbours and to the reproach of the law, if they have any fear or love for it; or if they have any esteem for their own profession; or really wish the welfare of Church and State; or if they truly honour their Master, the Supreme Ordinary, who was openly affronted by those Attentats; they would, they must admit the Querel of the Attentats and revoke them; or at least grant a Commission of Delegates to hear and determine in one action and at the same time the principal appeal, the nullity of the sentence and also the Attentats; *Solet signatura Commissionem dare, quod*

*final & final cognisitor & judicium de Nullitate sententie, de
retractis & Negatione principalem* Id. Lancell. fol. 13. n. 228. m. 101

It hath been fully proved before in p. 139, and in following pages of this Argument, that the Lord Chancellor will not deny to the Petitioner a Commission of Delegates upon his Querel of Nullities against the said Dublin Commissioners, if the Nullities be certain and sufficient: for the Common Law, the Irish Act of Appeals and the Usage of the High Court of Ch. in this Kingdom do all allow such a Commission not only upon Appeals and Provocations but upon other process, viz. Querel of Nullity; and this process of Nullities has run down in the course of that Court in *Officina Justitie* from 28 H. 8. to this day, issuing thence the Commissions of Delegates to proceed in *Causa Nullitatis, omisso appellationis antiquior* according to the Canon Law and the Practice of the Courts of the Chancery and the Rota in Rome, as hath been shew'd before; and the Course of a Court is the law for that Court, and the Petitioner insists on his right in it, and that he ought not to be excluded from it.

This Querel does alledge & assign seven substantial Nullities in the Proceedings and Sentences of the said Commissioners against the Petitioner, and certainly these are sufficient in Law for the examination of them in the Court of Delegates; the truth of the allegations are not to be proved before the Lord Chancellor. There are many other Nullities, manifest in the said proceedings and sentences, but that, which goes thorow all of them, is the Incompetency of Jurisdiction; and this is said in the law to be an incurable nullity; *Jurisdictionis nullitas pro defectu insanabili habetur*; Vant. de Null. p. 140. *Nullitas proveniens ex defectu Jurisdictionis nunquam excluditur, nisi stante statuto quod non possit dici de nullitate*; Marant. Spec. p. 272. n. 40. The matters, with which the said Commissioners charged the Petitioner, and for which they pretendedly condemned him, were not cognisable before them; viz. non payment of proxy-mony, non exhibition of title, parochial non residence, &c. The said Commissioners did not article, prosecute or sentence him for any enormity or immorality, or for any of the offences

offences complained of and specified in their Commission, or for any matter which was within the true intent of the said Commission, or of the *Infinet. 2. Eliz. c. vi.* upon which the said Commission was intendedly grounded. This Commission did expressly set forth Thus *Jo. an act only of the said Act was committed to the said Commissioners as was necessary to redress the grievous abuses, contempts and enormities then specified and complained of and such like.* It hath been shewn before in pag. 18. by the authorities of above 30 Temporal Judges, That Ecclesiastical Commissioners (empowered by the like English Act) could not intermeddle with any ordinary Ecclesiastical offences, altho' these might be inserted in their Commission, and if they did meddle with them, those matters were *coram non Judice*, and their acts and decrees were as the intermeddlings of strangers or private men: The branch in those Acts, concerning Ecclesiastical Commission, was construed to extend only to notorious extraordinary Ecclesiastical crimes, which by the Canon-Law were punishable in an extrajudicial and extraordinary procedure, as hath been already shewn; and that the Ecclesiastical Commissioners, authorized by those Acts, were incompetent in taking cognizance of any ordinary Ecclesiastical offences: This was the opinion of the Temporal Judges: and these Judges were the proper if not the only Expositors of Statutes, even those which concern Ecclesiastical Jurisdiction; *2 Inst. 5. 14. 6. 8. Reg. Rep. 497.* and they have likewise resolved upon all Ecclesiastical Commissions, especially those appointed by the Prince or the Statute-Law, that for default of Jurisdiction, the acts and judgments of such Commissioners are absolutely void and *coram non Judice*; and the party grieved by them and complaining thereof, need not to plead and assign their errors: *3 Vent. 233. 234. 3 Inst. 166. 10. Rep. 76.* and the assignment of Jurisdiction given to them by the party will not make them rightful Judges, nor will his consent give power to a Court which by right has none: *12 Rep. 78.* and these Resolutions are the same with the Canonists; *Sententia a non suo Judice lata nullius est momenti; Extra. l. i. tit. 4. c. 3. Reform. p. 192. Lynw. p. 91. Jar. Reg. 1290.*

This Argument needs not any additional strength by shewing the

the weakness of the said *Lisburn Commission*, whether it was *Regal* or *Regent*; nor the said Commissioners incompetency by not qualifying themselves as the Statutes had prescribed: But the force of this Argument lies on the nullities of the said *Lisburn Commissioner's* proceedings and sentences as acts and decrees made contrary to the form and tenor of their Commission, and expressly contrary to the Rules, course & practice of the Law and Consistory Ecclesiastical. All acts of Commissioners, made not pursuant to their authority, are utterly void, altho' those acts should be confirmed by the King, as the Judges say in *Dyer* 263. *Gro. Jac.* 336. *Co. Litt.* 113, 258. 4 *Inst.* 231. 10 *Rep.* 76. *Bacon's max.* 16. and so likewise the Ecclesiastical Judges say, *Delegatus habet Jurisdictionem limitatam & non extendibilem ultra personas et causas in delegatione contentas; quoad alias causas & personas remanet privatus*; *Marant. Spec.* p. 92. n. 29. *Jur. Reg.* 42. *Extra.* l. 1. m. 3. c. 22. & m. 29. c. 37. The said Commission required the Commissioners to proceed in Jurisdiction according to the course of the Ecclesiastical law of force in Ireland, according to the Canons of the Church & the practice of the Consistorial Courts in this Kingdom. When the Transmiss of the Process of the said Commissioners against the Petitioner is seen by the Delegates, it will be evident that every one of their acts & decrees made against him was & is a manifest nullity, that these Commissioners had committed notorious & grievous errors in the said acts & decrees, that they had permitted their meer & noble office & arbitrary procedure in matters of ordinary cognizance, that they had omitted judiciary order, and the solemnities of the law, and that they had inflicted on him excessive punishments without any just cause: and the Petitioner is fully perswaded, that his adversaries, (lest those Nullities should be brought into judgment in this world) have done, and now do, and will do their utmost endeavors, that the said Process may never be transmitted into the Court of Delegates; but Truth and Justice are stronger than those endeavors and will prevail.

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THE
Lisburn-Commission Ecclesiastical

To which the foregoing Argument refers.

Capell, Cyrill Wich, William Duncombe.

LET their Majesties Commission be forthwith made out in due form of Law according to the Tenor of the words following. **WILLIAM** and **MARY** by the Grace of God of England Scotland France and Ireland King and Queen, Defenders of the Faith &c. To the Right Reverend Fathers in God **Anthony** Lord Bishop of Meath, **Capell** Lord Bishop of Dromore and **William** Lord Bishop of Derry Greeting Whereas by a Statute made in this Kingdom in the second year of Queen **Elizabeth** of happy memory Intituled an Act for restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all forreign Power repugnant to the same, It is amongst other things Enacted That the said Queen her heirs and successors Kings and Queens of their Majesties Realms of Ireland shall have full power and authority by vertue of the said Act by Letters Patents under the Great Seal of England or of this Realm of Ireland, and the Lord Deputy or other Chief Governor or Governors of this Realm of Ireland for the time being, shall likewise have full power, and authority by vertue of the said Act by Letters Patents to be made by his or their Warrants under the Great Seal of this Kingdom, to name, assigne, and authorize, when and as often as her Highness her heirs and Successors or the Lord Deputy Governor or Governors of this Realm for the time being, shall think meet and convenient, and for such and for so long time as should please her Highness her heirs and successors, or the Lord Deputy, Governor or Governors of this Realm for the time being, such Person or Persons being naturall borne Subjects as her Highness her heirs and successors or the Lord Deputy, Governor or Governors, for the time being, shall think meet to Exercise use occupie and Execute under her Highness her heirs and Successors all manner of Jurisdictions, Priviledges and Prebeminencies in any wise touching and concerning any Spiritual or Ecclesiastical Jurisdiction within this Realm of Ireland, and

visit, reform and redress, order, correct and amend all such Errors, heresies, schismes, abuses, offences, Contempts and Enormities whatsoever, which by any manner of Spiritual or Ecclesiastical power, authority or Jurisdiction can or may lawfully be Reformed, Ordered, Redressed, Corrected, Restrained or amended to the pleasure of Almighty God, the Increase of virtue, and the Conservation of the peace and Unity of this Realm; and that such Person or Persons, so to be named, assigned, authorized, and appointed by her highness her heires or successors, or by the Lord Deputy, Governor or Governors of this Realme, for the time being, in manner aforesaid, after the said Letters Patents to him or them made and delivered as is aforesaid shall have full power and authority, by vertue of this Act and of the said Letters Patents under her highness her heires and successors, to Exercise, use and Execute all and singular the Premises, according to the Tenor and Effect of the said Letters Patents any matter or Cause to the Contrary in any wise notwithstanding. And whereas several Complaints are made daily of many grievous offences, abuses and Enormities to have been committed by Doctor Thomas Hacket the present Bishop, and divers of the Clergy of the Diocese of Down and Connor, to the great scandall of Religion, and Contrary to all good order and Discipline in the Church, which ought forthwith to be Enquired into, and redressed, corrected and amended with whatsoever shall be found amiss in the Ecclesiastical State of those Diocess. Therefore we minding to putt in Execution so much only of the Act aforesaid and the authorities therein contained as shall be necessary for Regulating and Reforming redressing correcting and amending the aforesaid abuses so complained of as aforesaid, and other the like offences in the said Diocess or either of them, and that all such Persons as aforesaid who shall be found to have offended in any of the matters contained in this our Commission may be condignly punished. And having an especial Trust and Confidence in your Wisdoms and Discretions of our special Grace, certain Knowledge and meer motion by and with the advice and Consent of our Right Trusty and wellbeloved Councillors Henry Lord Baron Capell of Tewkesbury Sir Cyrill Wich Knt. and William Duncombe Esq; Lords Justices Generall and Generall Governors of our said Kingdom of Ireland HAVE authorized appointed and assigned you to be our Commissioners and by these presents do give full power and authority unto you or any two of you from time to time hereafter during our pleasure to Exercise use occupie and Execute all manner of Jurisdictions, Priviledges and Preheminencies in any wise touching or concerning any spiritual or Ecclesiastical Jurisdiction in the said two Diocess of
Down

Down and Connor or either of them for the purposes aforesaid, and to visit reforme correct and amend all such Errors abuses offences Contempts and Enormities whatsoever committed or permitted by the said Bishop or any of the Clergy or other Persons Ecclesiastical in the said Diocese or either of them which by any manner of Spirituall or Ecclesiastical Power authority or Jurisdiction can or may lawfully be reformed, ordered redressed corrected restrained or amended, according to the authority and power limited and appointed by any Laws Ordinances Customs Constitutions or Statutes of this our Realme of Ireland, and to use Exercise and Execute any Jurisdiction or preheminency upon, touching or concerning the Premises which by any Ecclesiastical Laws Customs or authorities may be lawfully used or exercised within the said Dioceses of *Down and Connor* or either of them, according to the Laws Ordinances Customes and Statutes in force in this Kingdom of Ireland. AND furthermore we do give full power and authority by vertue of these presents to you or any two of you by all lawful wayes or meanes to call before you or any two of you in such Place or Places, and att such convenient time or times in the said Dioceses or either of them as you or any two of you shall limit and appoint any person or Persons which have, enjoy, keep or possess any Spirituall or Ecclesiastical Dignity, promotion, Benefice or Cure in the said Dioceses or either of them, and such as are promoted to any Ecclesiastical order or Orders, and all Chancellors Commisaries Officialls Registers or pretended Registers and other Ecclesiastical Officers belonging to the Ecclesiastical Courts of the said respective Dioceses and to require or, if Cause be, to compell him or them to Exhibit before you the Title or Titles which they have or pretend to have to any Promotion Dignity Benefice Cure Place or Office Ecclesiastical in the said Dioceses, as alsoe all such Licences Dispensations Faculties as they or any of them have or pretend to have for Enjoying keeping or having any such Ecclesiastical Promotion Dignity Benefice or Cure and alsoe their Letters of Orders, and the same or any of them diligently to examine and try whether they be consonant and agreeing to the Laws and other Ecclesiastical Ordinances and Constitutions in force in this Kingdom of Ireland. And if you or any two of you do find any of them contrary to the true Intent and meaning of the said Laws and other Ecclesiastical Ordinances and Constitutions, as far as by Law you may, annihilate revoke and disannull the same and to pronounce them void in Law, and to give lawful Knowledge to the Patrons to present meet Incumbents to such Ecclesiastical Benefices and Promotions as shall be soe pronounced void. AND we doe further

further give full power and Authority unto you or any two of you as aforesaid in your Visitation of the said Dioceses to hear and determine, order, Correct, punish and reform all Adulteries, Fornications, Incests, Sacrileges, Simonies and other Ecclesiasticall Offences of any the Persons aforesaid, *according to the Course of the Ecclesiasticall Laws of force in this Kingdom*, Willing and commanding you or any two of you as aforesaid from time to time hereafter to use all such *Lawfull* ways and means for Examination and searching our all and singular the Premises or any of them, as by you or any two of you as aforesaid shall be thought fitt, expedient and necessary, and upon due and sufficient proof of the Errors, offence or offences, abuses, Contempts and Enormities *before specified* against any such Person or Persons of the respective Dioceses of *Down and Conner* as aforesaid by Confession of the Party or Lawfull Witnesses or by due Conviction before you or any two of you to award such Punishment and Correction to such Offender by admonition, Suspension, Sequestration, Excommunication or Deprivation and other Censures and processe, as heretofore hath been used in the like Cases by the Ecclesiasticall Laws of this Kingdom as by the Wisedoms and Discretions of you or any two of you shall be thought meet and convenient. And further we doe give full power and authority unto you or any two of you as aforesaid from time to time to call before you all and every such Offender and Offenders as aforesaid and such as you or any two of you as aforesaid shall suspect to be Guilty in any of the Premises, and alsoe all such Witnesses as you or any two of you as aforesaid shall think meet to be called, and the said Witnesses and every of them to examine or cause to be examined upon their Corporall Oaths for the better Tryall and Discovery of the Premises or any part thereof, and if you or any two of you shall find any such person or persons obstinate and disobedient in their appearance before you or any two of you as aforesaid at your calling, Process or Commandment or otherwise for any thing touching the Premises or any part thereof, that then you or any two of you as aforesaid shall have full power and authority to punish the same *according to the Ecclesiasticall Laws of this Kingdome*. Alsoe we do hereby give full Power and authority to you or any two of you in all and singular the Premises and other matters relating to the due Execution of this Commission to administer an Oath from time to time hereafter to all and every Witness or Witnesses in all and singular the matters and Causes Ecclesiasticall and Spirituall which according to the directions above given, and *our true Intent and meaning herein declared* shall properly and regularly come before you in the

the said Dioceses or either of them as to you or any two of you in your wisdoms and *Discretions* shall seem necessary or convenient. And we are further hereby graciously pleased for the better and more Effectuall Execution of this our Commission to give and grant and we do hereby give and Grant unto you or any two of you as aforesaid full power and authority from time to time during the Continuance of this our Commission to adjourn your Sitting upon the Execution thereof for such time and times and to such place and places in the said Dioceses or either of them as you or any two of you shall think fit. And alsoe to Elect, nominate and appoint such fit person or persons as you or any two of you shall think meet and convenient to be Advocate, Proctor, Clerk, Actuary or Register of this our Commission, as also to be Messenger or Summoner to be from time to time attendant thereupon, and such person or persons so constituted and appointed by you, or any two of you as aforesaid for any Misdemeanor, Fault or Offence to displace and remove, and to nominate and appoint one or more other fit person or persons in the room or place of such person or persons so displaced or removed from time to time during the execution of this our Commission, as you or any two of you in your discretions shall think fit. And we do hereby further give and grant to you, or any two of you, full power and authority for the better execution of this our Commission in all your Precepts Citations, Summons, Decrees, Sentences and other proceedings upon this our Commission, to make use of such *Publick Seal* as to you or any two of you shall in your discretions seem meet and convenient, Hereby authorizing and fully impowring you or any two of you, as also such Actuary, Register, Messenger or Summoner from time to time to be appointed and constituted by you or any two of you as aforesaid to take and receive in your said Visitation of the said Dioceses as aforesaid, and in the execution of this our Commission such *Procurations, Exhibits, Fees, Profits and Perquisites* as are reasonable and lawfull and have been in like cases customarily had, taken or received. And for the more full compleat and effectual execution of this our Commission, We do hereby Give and Grant to you or any two of you full Power and Authority by all lawful ways and means agreeable to the Ecclesiastical Laws of this Kingdom, to reform redress order correct and amend all such Errors, Offences, Abuses, Contempts and Enormities, which shall by you or any two of you be found to have been committed in the said Dioceses by any Ecclesiastical persons offending in the Premises or any of them and such Orders Decrees Sentences and Censures as you or any two of you shall make therein to promulge and execute, and to do all other lawful matters and things whatsoever in the due execution of this our

Commission which shall by you or any two of you be thought necessary and expedient *Willing and Commanding* as well the *aforesaid Bishop* of the said *Dioceses*, as all *Deans, Archdeacons* and their several *Officers, Vicar Generals, Commissaries* and others using and exercising any *Spiritual or Ecclesiastical Jurisdiction* in the said *Dioceses*, *Registrars, Actuaries and Scribes, Summoners and Apparators* and all other the *Officers* of the *Ecclesiastical Courts* of the said *Dioceses*, as also all *Justices of the Peace, Mayors, Bayliffs, Sovereigns, Portrieves, Constables* and all other our *Officers* and *Leige People* to be *aiding and assisting* to you or any two of you in the *lawful Execution* of this our *Commission* to you directed as they and every one of them will answer the contrary at their utmost Peril: And We will and grant that these our *Letters Patents* shall be a *sufficient Warrant and Authority* as well to you and every of you, as to all and every *Officer and Officers* to be appointed as *aforesaid* by you or any two of you and to every of them for all and every matter or thing which you or any two of you or other the persons *aforesaid* shall lawfully doe exercise or execute according to the *true Intent* and meaning of these Presents, In *Witness, &c.*

Recepimus decimo nono die Decembris millesimo Sexcentesimo nonagesimo tertio.

Meath C. S.

Longford C. S.

May it please your Lordships

This *Fiant* containeth a *Commission* authorizing and appointing the *Right Reverend Fathers in God, Anthony* Lord Bishop of *Meath, Capell* Lord Bishop of *Dromore* and *William* Lord Bishop of *Derry* or any two of them to be their *Majesties Commissioners* during their *Majesties pleasure* to exercise, use, occupie and execute all manner of *Jurisdictions Privileges and Preheminencies* in any wise touching or concerning any *Spiritual or Ecclesiastical Jurisdiction* in the *Diocese of Down and Connor* or either of them for the *Purposes* herein mentioned, and to visit reform redress order correct and amend all such *Errors Abuses Offences Contempts and Enormities* whatsoever committed or permitted by the *Bishop* of the said *Dioceses* and his *Clergy* or any of them in the said *Dioceses* or either which by any manner of *Spiritual or Ecclesiastical Power Authority or Jurisdiction* can or may lawfully be reformed, ordered, redressed, corrected, restrained or amended according to their *Majesties Ecclesiastical Laws*, and the same is grounded on a *Statute* made in this *Kingdom* in the *Second year* of

of the Reign of Queen Elizabeth of happy Memory, Instituted, An Act for restoring to the Crown the ancient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all Foreign Power repugnant to the same, and is done according to your Lordships Warrant Dated at Dublin Castle the first day of December One thousand six hundred ninety and three Remaining with me their Majesties Solicitor General

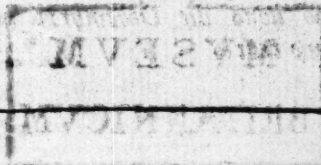
Rish. Levinge.

Entred at the Docket Office the Nineteenth day of December, One thousand six hundred ninety and three.

H. May.

A true Copy of a Fiant remaining in the Office of the Rolls of Her Majesty's High Court of Chancery in Ireland.

Ex. per Cha. Baldwin,
DClr. et Custod. Rotlor.



ERRATA.

Page 4. Line 28. for November, read December. p. 8. l. 30. for Commissioners, r. Commission. p. 12. l. 27. for Successors, r. Predecessors. p. 19. l. 33. r. Papal. p. 22. l. 30. r. sunt. p. 23. l. 6. for new, r. now. p. 29. l. 3. r. notorious. p. 34. l. 3. for their, r. his. p. 40. l. 30. r. conclusionem. p. 46. l. 25. for or, r. or. p. 53. l. 8. r. obstat. p. 54. l. 36. for consideration, r. Consultation. p. 65. l. 10. r. varietates. p. 72. l. 16. r. Apostolicis. p. 65. l. 11. for Ibid, r. 11. q. 3. p. 74. l. 24. r. duxerit. p. 87. l. 6. r. Judices. p. 96. l. 23. r. itinere. p. 115. l. 19. for for, r. 10. p. 139. l. 22. for facile, r. tacite. p. 140. l. 2. r. agendo. p. 140. l. 9. r. Jurisdictionis. p. 159. l. 35. r. remittitur. p. 168. l. 28. r. a true and. p. 180. l. 28. r. depriving.

